

**2008 FLOODPLAIN AMENDMENTS  
TO THE  
WAUKESHA COUNTY SHORELAND AND  
FLOODLAND PROTECTION ORDINANCE**

**SECTION 1**

Repeal and recreate Section 1(b)4.C to read as follows:

- C. Controlling shoreland excavation and other land altering activities.

Draft: As presented to LUPE On 11/04/08.
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**SECTION 2**

Create section 1(b)5 to read as follows:

5. Prevent uncontrolled development and use of the floodplains through:
- A. Protecting life, health and property,
  - B. Minimizing expenditures of public funds for flood control projects,
  - C. Minimizing rescue and relief efforts undertaken at the expense of the taxpayers,
  - D. Minimizing business interruptions and other economic disruptions,
  - E. Minimizing damage to public facilities in the floodplain,
  - F. Minimizing the occurrence of future flood blight areas in the floodplain,
  - G. Discouraging the victimization of unwary land and homebuyers,
  - H. Preventing increases in flood heights that could increase flood damage and result in conflicts between property owners, and
  - I. Discouraging development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.

**SECTION 3**

Create subsections in Section 2(b) to read as follows:

"A ZONES": Those areas shown on the Official Zoning Map and depicted on the Flood Insurance Rate Map, which would be inundated by the regional flood. These areas may be numbered and studied A Zones, which are reflective of flood profiles, or unnumbered A Zones, which are unstudied or approximate areas and where a flood profile is unavailable.

ACOE: See Army Corps of Engineers.

Army Corps of Engineers: Federal agency commonly referred to as ACOE.

Base Flood: A flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a Flood Insurance Study and depicted on a Flood Insurance Rate Map. Base floods are numbered A-Zones on the Flood Insurance Rate Map.

Base Flood Elevation: The elevation of a base flood. Commonly referred to as BFE.

Campground: Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by two (2) or more camping units, or which is advertised or represented as a camping area.

Camping Unit: Any portable device used as a temporary shelter, including but not limited to a camping trailer, mobile home, bus, van, pick-up truck, tent or other recreational vehicle.

Crawlspace: An enclosed area below the first usable floor of a building, generally less than five feet in height, which may be used for access to plumbing, electrical, and other utilities.

Development: Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of principal or accessory structures; the construction of additions or alterations to principal or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of structures; land division layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

Equalized Assessed Value: The value of a property (either the improvements on the property or the land or both), which is calculated by dividing the assessed value of the subject property established by the local community assessor by the assessment ratio established for the community. This value is indicated on the local tax roll or on the County tax roll and is an expression of the current market value of the subject land or improvement or both. For the purposes of this ordinance, the valuations utilized will be the valuation of the improvement/s.

Federal Emergency Management Agency: The federal agency that administers the National Flood Insurance Program. Commonly referred to as FEMA.

FEMA: See Federal Emergency Management Agency.

Flood Frequency: The probability of a flood occurrence, which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent (%) chance of occurring in any given year.

Flood Insurance Rate Map: A map of a community on which the Federal Insurance Administration has delineated both floodplains and the risk premium zones applicable to the community. Commonly referred to as FIRM. This map can only be amended by the Federal Emergency Management Agency.

Flood Insurance Study: A technical engineering examination, evaluation, and determination of the local floodplain areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The floodplain areas are designated as numbered and unnumbered A-Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program. Commonly referred to as FIS.

Flood storage or flood storage capacity: Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.

Floodfringe: That portion of the floodplain, outside of the floodway, which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.

Floodplain Certificate of Compliance: A certification that the construction and the use of the land or a structure, the elevation of fill, and the lowest floor of a structure are in compliance with all of the floodplain provisions of this ordinance.

Floodplain encroachment: Any fill, structure, equipment, use or development in the floodplain.

Floodplain island: A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

Floodplain Management: Policy and procedures to insure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.

Habitable Structure: Any structure or portion thereof used or designed for human habitation.

High Flood Damage Potential: Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure and its contents.

Historic structure: Any structure that is either:

- a. Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register, or
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district, or
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior, or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.

Municipality: A County, City, Village, or Town.

National Geodetic Vertical Datum: Elevations references to mean sea level datum, 1929 adjustment. Commonly referred to as NGVD.

NAVD: See North American Vertical Datum.

New Floodplain Construction: Structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by Waukesha County and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the “start of floodplain construction” commenced on or after the effective date of an initial Flood Insurance Rate Map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

NGVD: See National Geodetic Vertical Datum.

Nonflood disaster: Has the meaning of Chapter 87, Wisconsin Statutes regarding flood control, specifically a fire or an ice storm, tornado, windstorm, mudslide or other destructive act of nature, but excludes a flood.

North American Vertical Datum: Elevations referenced to mean sea level datum, 1988 adjustment. Commonly referred to as NAVD.

Obstruction to flow: Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood elevation.

Person: An individual, or group of individuals, corporation, partnership, association, municipality or state agency.

Private sewage system: A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Commerce, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than a structure.

Public Utilities: Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.

Recreational Vehicle: Motorized vehicles that include a cabin for living accommodations, are commonly used for recreational travel and touring and do not exceed 400 square feet when measured at the largest horizontal projection. Vehicles included in this category come in several forms: travel trailers, tent trailers and camping trailers, all of which must be towed by another vehicle; and truck campers, motor homes and camper vehicle, all of which have a motor within the body of the vehicle and are self-propelled.

Regional Flood: A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the Flood Insurance Rate Map, the regional flood elevation is

equivalent to the base flood elevation. A regional flood may also be determined by other studies approved by the WDNR.

Regional Flood Elevation: The elevation of the regional flood. Commonly referred to as RFE.

SEWRPC: See Southeastern Wisconsin Regional Planning Commission.

Southeastern Wisconsin Regional Planning Commission: The official area-wide planning agency for the southeastern region of Wisconsin. Commonly referred to as SEWRPC.

Start of Construction: This definition only applies to those structures located in the floodplain. The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure: Any man-made object with form, shape and utility, that is constructed or otherwise erected, attached to or permanently or temporarily placed, either upon the ground or upon another structure. For the purposes of this ordinance, the term “structure” includes swimming pools, hot tubs, patios, decks, gazebos, retaining walls, monuments, entrance gates, radio towers, television towers and gas or liquid storage tanks that are principally above ground, but does not include landscaping or earthwork including graded areas, filled areas, ditches, berms, or earthen terraces. The term “structure” does not include flag poles, mailboxes, fences, basketball hoops, satellite dishes 18 inches or less in diameter, or small objects that are easily moved by hand, such as lawn chairs, portable grills, portable picnic tables, temporary fences, bird feeders, birdhouses and birdbaths.

Subdivision: Has the meaning given in Section 236, Wisconsin Statutes.

Substantial damage: Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.

Water Surface Profile: A graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

Watershed: The entire region contributing runoff or surface water to a watercourse or body of water.

WDNR: See Wisconsin Department of Natural Resources.

Well: Excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

Wisconsin Department of Natural Resources: The State agency commonly referred to as WDNR.

#### **SECTION 4**

Repeal and recreate Section 2(b)24 to read as follows:

24. Bulkhead line: A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the WDNR pursuant to s. 30.11, Wisconsin Statutes, and which allows limited filling between the bulkhead line and the original ordinary high water mark, except where such filling is prohibited by the floodway provisions of this ordinance.

#### **SECTION 5**

Repeal and recreate Section 2(b)25 to read as follows:

25. Channel: A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.

#### **SECTION 6**

Repeal and recreate Section 2(b)32 to read as follows:

32. Dryland Access: A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.

#### **SECTION 7**

Repeal and recreate Section 2(b)41 to read as follows:

41. Flood or Flooding:  
A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:
- a. The overflow or rise of inland waters,
  - b. The rapid accumulation or runoff of surface waters from any source, or
  - c. The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

## **SECTION 8**

Repeal and recreate Section 2(b)42 to read as follows:

42. Flood profile: A graph or longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

## **SECTION 9**

Repeal and recreate Section 2(b)44 to read as follows:

44. Floodlands: See floodplain.

## **SECTION 10**

Repeal and recreate Section 2(b)45 to read as follows:

45. Floodplain: Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe, and may include other designated floodplain areas for regulatory purposes. Also known as floodlands.

## **SECTION 11**

Repeal and recreate Section 2(b)47 to read as follows:

47. Floodproofing: Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities, structures and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage. Such facilities shall be designed to withstand the flood velocities, forces and other factors associated with the regional flood, and which will assure protection of the property to the flood protection elevation.

## **SECTION 12**

Repeal and recreate Section 2(b)48 to read as follows:

48. Floodway: The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

## **SECTION 13**

Repeal and recreate Section 2(b)51 to read as follows:

51. Freeboard: A factor of safety expressed in terms of a certain amount of feet above a calculated flood level. Freeboard compensates for the many unknown factors that contribute to flood heights greater than the height calculated, and include, but not are limited to, ice jams, debris accumulation, wave action, obstructed bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and aggregation of the river or stream bed.

## **SECTION 14**

Repeal Section 2(b)58.

## **SECTION 15**

Repeal and recreate Section 2(b)66 to read as follows:

66. Increase in Regional Flood Height or Elevation: A calculated upward rise in the regional flood elevation, based on a comparison of existing conditions and proposed conditions, which is directly attributable to development in the floodplain, but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

## **SECTION 16**

Repeal and recreate Section 2(b)87 to read as follows:

87. Modular Home (also called manufactured or pre-fabricated/pre-cut home): A principal structure which is partially pre-assembled at a manufacturing plant and placed together or erected on a lot or parcel as a dwelling unit or units (also called "pre-fabricated" or "pre-cut" homes or "double-wide" units) meeting the requirements of all applicable state and local building codes.

## **SECTION 17**

Repeal and recreate Section 2(b)96 to read as follows:

96. Ordinary High Water Mark (high water elevation): The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

## **SECTION 18**

Repeal and recreate Section 2(b)100 to read as follows:

100. Pierhead line: A boundary line established along any section of the shore of any navigable waters by a municipal ordinance approved by the WDNR, pursuant to section 30.13 of the Wisconsin Statutes. Piers and wharves are only permitted to the landward side of such pierhead lines unless a permit has been obtained pursuant to section 30.12(2) of the Wisconsin Statutes.



## **SECTION 19**

Repeal and recreate Section 2(b)121 to read as follows:

121. Setback, shore: The horizontal distance between the closest point of a structure or building and the ordinary high water mark of navigable waters, the floodplain, or the conservancy district, whichever distance is greater.

## **SECTION 20**

Repeal and recreate Section 2(b)122 to read as follows:

122. Shorelands: Those lands lying under, abutting and close to navigable water and within the following area: One thousand (1,000) feet from the ordinary high water mark of navigable lakes, ponds or flowages; three hundred (300) feet of the ordinary high water mark of navigable rivers or streams, or to the landward side of the floodplain (as defined herein), whichever is greater.

## **SECTION 21**

Repeal and recreate Section 2(b)123 to read as follows:

123. Shoreland/wetlands: Those wetland areas that lie within the shoreland and floodland jurisdiction of this ordinance and that have been designated as such on the Final Wisconsin Wetlands Inventory Maps for Waukesha County prepared by the WDNR. Wetlands are generally typified by site conditions where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

## **SECTION 22**

Repeal and recreate Section 2(b)140 to read as follows:

140. Nonconforming structure, legal: A building, structure, or portion thereof, lawfully existing at the time of passage of this ordinance, but which does not conform in one or more respects to the regulations of this ordinance.

## **SECTION 23**

Repeal and recreate Section 2(b)148 to read as follows:

148. Unnecessary hardship: Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.

## SECTION 24

Repeal and recreate Section 2(b)150 to read as follows:

150. Nonconforming use, legal: The use of a building or land lawfully carried on-at the time of the passage of this ordinance or amendments thereto, but which does not conform to the use regulations established by this ordinance.

## SECTION 25

Repeal and recreate Section 3(a) to read as follows:

(a) **Jurisdiction and Mapping**

The jurisdiction of this ordinance shall apply to all structures, land, and water including those lands within the unincorporated floodland and shoreland areas, as defined herein, and located within the boundaries of Waukesha County, Wisconsin.

Originally, the Waukesha County Board of Supervisors on June 23, 1970 adopted one (1) inch equals one thousand (1,000) feet individual township shoreland and floodland zoning maps as part of this ordinance.

These areas of jurisdiction were redrawn and indicated on four (4) square mile aerial photographs at a scale of one (1) inch equals four hundred (400) feet and were made a part of this ordinance. As a result of ongoing large scale topographic mapping and survey projects conducted under section 87.31 Wisconsin Statutes and pursuant to county needs, additional topography maps at a scale of one (1) inch equals two hundred (200) feet with contour intervals of two (2) feet were also made a part of this ordinance where said maps contained greater detail and information relative to information pertinent to said shoreland and floodland areas. Together with the one (1) inch equals four hundred (400) feet aerial photographs referenced above, these maps amended and replaced the original one (1) inch equals one thousand (1,000) feet township zoning maps previously adopted and referred to above for the specific land areas covered within the area for which the shoreland and floodland jurisdiction has been shown thereon.

Currently, the County is converting the previously referenced maps to digital format using the Geographic Information System (GIS) to allow for greater access to the mapping information. Paper copies are on record in the Waukesha County Department of Parks and Land Use-Planning and Zoning Division office. The maps are converted by town area and the shoreland and floodland areas are mapped using up-to-date floodplain, navigability, elevation, wetland, and parcel information, as well as historical information contained on the aforementioned one (1) inch equals four hundred (400) feet aerial photographs. The scale of the map differs by town, but in general are one (1) inch equals one thousand (1000) feet. These new maps supersede the aforementioned aerial and contour maps as they are completed and approved by the Plan Commission and the County Board.

The boundaries of the floodplains and wetlands shall be those areas designated as such on the above-referenced maps and as described in Section 6(b) of this Ordinance. For floodplain management purposes, the regulated floodplain boundary shall be that as set forth

in the FEMA Flood Insurance Rate Maps or as depicted as the C-1, EFD, and A-E districts of the official zoning map, whichever boundary designates a greater floodplain area. Where a stream is subsequently identified or determined to be navigable, and was not previously subject to Shoreland and Floodland Ordinance jurisdiction, said navigable stream and the lands bordering it, which meet the Conservancy zoning district standards for mapping, shall immediately be subject to the jurisdiction of this Ordinance, including those requirements such as conservancy setback requirements and other water quality related issues. Subsequently, upon processing and approval of an amendment to include the entire area along said stream or water course within the shoreland jurisdiction and the holding of requisite hearings pursuant to the provisions of this Ordinance, all shoreland areas and provisions attendant thereto shall fall under the jurisdiction of this Ordinance.

## **SECTION 26**

Repeal and recreate Section 3(b) to read as follows:

### **(b) Compliance**

1. No structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered and no land or water areas shall be hereafter used or altered within the floodland and shoreland areas of Waukesha County without either a zoning or conditional use permit where changes are being proposed and without full compliance with the provisions of this ordinance and other local, county, state, and federal regulations.
2. Proposed development sites shall be reasonably safe from flooding, meaning that any subsurface waters related to the base flood will not damage existing or proposed structures and base flood waters will not inundate the land or damage structures that are removed from the floodplain in compliance with the standards of Section 8- Existing Floodplain Overlay District. If a proposed development site is in a flood-prone area, all new floodplain construction (as defined by this Ordinance) and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with materials resistant to flood damage; be constructed by methods and practices that minimize flood damages; and be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Subdivisions shall be reviewed for compliance with the above standards. All subdivision proposals, including mobile home parks, shall include regional flood elevation and floodway data.
3. No local permit for construction or development shall be issued within unincorporated shoreland and floodland areas of Waukesha County until the county zoning permit has been issued.
4. Statutory Exemption for Farm Drainage Ditches: Under sections 87.30(1m) and 281.31(2m) of the Wisconsin Statutes, this ordinance does not apply to non-structural uses of lands (i.e., pasture, cultivation) adjacent to farm drainage districts

if all of the following situations exist:

- A. Such lands are not within the floodplain of a natural stream or river.
- B. Those parts of the drainage ditches adjacent to these lands were non-navigable streams before ditching.
- C. Such lands are maintained exclusively in non-structural uses.

Should a question arise as to the applicability of this section, an interpretation shall be sought as provided for under section 42(b) of this Ordinance or by the WDNR. The submission of plans and supporting documentation shall be required to enable the staff or the WDNR to make a finding to support the claim of exemption. Where farm drainage ditches exist and the agricultural uses are terminated, and the lands are changed to urban uses, this exception expires and the subject stream and shoreland and floodland areas shall fall under all provisions and the jurisdiction of this Ordinance.

However, regardless of the agricultural use of the land, any building and structure is subject to the provision of this Ordinance relative to size, location or other matters relating to building and structures.

## **SECTION 27**

Repeal and recreate Section 3(c)1 to read as follows:

### **(c) Zoning, Occupancy and Use Permits**

1. Zoning, occupancy and use permits: No structure, land or water or part thereof located in the unincorporated shoreland or floodland areas of Waukesha County shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted or structurally altered until: first, a county sanitary permit has been issued, where applicable, by the county health department unless municipal sewer is available in which case no sanitary permit is required; and second, a county zoning permit has been issued by the county zoning administrator, certifying that such activity complies with the provisions of this ordinance; and third, a conditional use permit, where applicable, has been issued by the county zoning agency certifying that such activity complied with the provisions of this ordinance. Such permits shall be obtained before any change is made in the type of use or before any nonconforming use is resumed, changed, extended or granted conditional use status pursuant to section 3(o) of this ordinance. Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply unless exempted by section 13.48(13) Wisconsin Statutes. However, where the substantive terms and objectives of this ordinance have been addressed and fulfilled by the WDNR where concurrent (WDNR and county) jurisdiction with this ordinance exists, so as to avoid duplication of effort, the terms of this ordinance shall not be imposed. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when section 30.2022, Wisconsin Statutes, applies, however, the State must comply with the National Flood

## **SECTION 28**

Repeal and recreate Section 3(c)2 to read as follows:

2. Application for: Zoning, occupancy and use permits shall be obtained from the county zoning administrator or designated deputy to the county zoning administrator as provided by section 41(b). No application for any permit, variance, special exception, conditional use, site plan, plan of operation, rezoning, license or other governmental approval under this ordinance shall be deemed to be properly filed unless it is signed by the applicant. Application shall be made on a form required by the Zoning Administrator and made prior to or at the same time as the application for a building permit, and shall be prepared in triplicate and shall include for the purpose of proper enforcement of this ordinance the following data:
  - A. A statement by the applicant as to the intended use of the premises and of any existing or proposed structures thereon.
  - B. An accurate map of the property, in triplicate, drawn to a reasonable scale and properly dimensioned showing:
    - i. The boundaries of the property involved.
    - ii. The location of the centerline of any abutting streets.
    - iii. The location on the lot of any existing buildings, proposed additions, or proposed new buildings, including the measured distances between such buildings and from the lot lines and from the centerline of any abutting street to the nearest portion of such building.
    - iv. The location of any existing structures, septic systems or wells within fifty (50) feet of the boundaries of the property involved.
    - v. The proposed location of private septic systems and private wells in areas not served by public sewage disposal systems and public water supplies and the location and results of soil borings and percolation tests.
    - vi. The proposed first floor elevation of any proposed buildings in relation to the existing and/or established grades of the lot, any abutting streets and the ordinary high water mark of any abutting stream, river or lake.
    - vii. The ordinary high water mark of any stream, river or lake on which the property abuts.
    - viii. The elevation and location of the floodplain of any abutting stream, river or lake.
  - C. Where the use involves human occupancy or use, and where such use is not served

by sanitary sewer and water, a county sanitary permit shall be required prior to issuance of the county zoning permit.

- D. If the development, improvements, or construction activities, are located in a floodplain the following information must be included:
- i. The location of floodplain and floodway limits as determined from the official zoning map or the Flood Insurance Rate Maps.
  - ii. Where the development, improvements or construction activities are located in a floodplain, where flood profiles are not available or where flood profiles are available but floodways have not been determined, the following shall be submitted to the Zoning Administrator and the Zoning Administrator shall submit the same to the WDNR, along with a written request for technical assistance to establish regional flood elevations and, where applicable, floodway data:
    - a. Two (2) copies of an aerial photograph or a plan, which shows the proposed development with respect to the wetland and floodplain limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and flood proofing measures.
    - b. Two (2) copies of any of the following information deemed necessary by the WDNR to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries:
      1. A typical valley cross-section showing the stream channel, the floodplain adjoining each side of the channel, the cross-sectional area to be occupied by the proposed development, and all historic high water information;
      2. A plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information;
      3. A profile showing the slope of the bottom of the channel or flow line of the stream;
      4. Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.
  - iii. The elevation of the lowest floor of proposed structures and any fill using the vertical datum from the adopted study – either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD).

- iv. Data sufficient to determine the regional flood elevation in NGVD or NAVD at the location of the development and to determine whether or not the requirements of sections 7 and/or 8 of this ordinance are met.
  - v. Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood elevation or discharge according to section 3(d)5.A of this ordinance. This may include any of the information noted in section 7(c).2 of this ordinance.
  - vi. For all subdivisions, as defined in Chapter 236 Wisconsin Statutes and all other proposed developments of five (5) acres or more in area, the applicant shall provide all survey data and computations required to show the effects of the project on flood elevations, velocities and floodplain storage. The applicant shall provide an analysis of the effect of the development on the regional flood profile, velocity of flow and floodplain storage capacity; a map showing location and details of vehicular access to lands outside the floodplain; and a surface drainage plan showing how flood damage will be minimized.
- E. All necessary permits from federal, state, and local agencies, including those required by the U.S. Army Corps of Engineers under s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344. shall be required prior to issuance of the zoning permit, unless the zoning permit must precede the other applicable permits.
- F. A fee, as may be established and periodically modified under section 41(b) 5. shall accompany each application. Such fee shall be paid by cash, check or money order to the Waukesha County Park and Planning Commission.

## **SECTION 29**

Repeal and recreate Section 3(d)5 to read as follows:

5. Preservation of Topography: In order to protect property owners from possible damage due to changes in the existing grade of adjoining lands, and to aid in preserving and protecting the natural beauty and character of the landscape, the following regulations, unless exempted by Wisconsin Statutes or other sections of this Ordinance shall apply:
- A. Within floodlands:
    - i. Permits required:
      - a. Onsite sewage disposal facilities are prohibited and not permitted unless authorized specifically by another provision of this Ordinance or other County Ordinance.
      - b. Dredging and pond construction are also conditional uses pursuant to section 4(g)14 of this Ordinance where allowed and in addition, may

require permits from the WDNR or the U. S. Army Corps of Engineers.

- c. Any structure or building, which is to be erected, constructed, reconstructed, structurally altered or moved into the floodplain and where the floodplain has been authorized to be filled, must comply with all provisions of the applicable zoning district in section 7 or 8 of this Ordinance.
- d. With the exception of the following activities, the placement of fill, excavation, or other land altering activities require a Conditional Use Permit per Section 4(g)14 of this ordinance and a rezone per Section 39 of this ordinance. Necessary amendments shall be made to the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with Section 39 of this Ordinance. The exceptions are as follows:
  - 1. The proposed use is permitted in Section 7, C-1 Conservancy District; Section 8, Existing Floodplain Development Overlay District; or Section 10, A-E Exclusive Agricultural Conservancy District.
  - 2. The fill, excavation, or other land altering activities do not exceed 15 cubic yards of material or 3,000 sq. ft. of area and the fill, excavation, or other land altering activities are not located in a wetland. In such case, a Minor Grading Permit is required.

ii. Standards for development:

- a. Within floodlands, including where the lands have been rezoned, the placement of fill, excavation, or other land altering activities are allowed by permit, the following standards must be met:
- b. Floodplain development must not impede drainage.
- c. Floodplain development must not reduce the flood water storage capacity of the floodplain.
- d. Floodplain development must not result in an increased regional flood elevation.
- e. Floodplain development must not obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development.
- f. Compensatory storage is required for all areas of authorized fill on a minimum of a one to one basis, which equals 100% replacement of any lost floodplain storage capacity. Excavation below the



groundwater table is not considered to provide an equal volume of storage. Compensation must be provided in a manner which is not deleterious to other property or the quality of any wetlands. The area of compensatory floodplain storage shall be in close proximity to the fill activity and shall not result in an increase in floodplain elevations on upstream or downstream properties

- B. Within shorelands--grading, clean fill disposal sites, topsoil removal, filling, alteration or enlargement of waterways, removal or placement of stream or lake bed materials, excavation, channel cleaning and clearing, ditching, drain tile laying, dredging, lagooning and soil and water conservation structures are conditional uses and must be approved in accordance with section 4(g) 14. of this Ordinance except as may otherwise be permitted in sections 3(d) 5.C. and D. or 7(c) 1. In addition, such uses may require a permit from the state agency having jurisdiction pursuant to Chapter 30 of the Wisconsin Statutes and, where applicable, a federal permit from the U.S. Army Corps of Engineers. All such uses and activities shall be consistent with the uses permitted in the C-1 Conservancy District, EFD Existing Floodplain Development Overlay District and A-E Exclusive Agricultural Conservancy District, if they occur within said district. If the proposed activity requires a rezoning of the lands, section 39 of this Ordinance must be complied with. Any alteration or relocation of a watercourse in a mapped floodplain shall not be approved until the Zoning Administrator has notified in writing all adjacent municipalities, the WDNR and FEMA regional offices and required the applicant to secure all necessary state and federal permits. The flood carrying capacity of any altered or relocated watercourse shall be maintained consistent with preexisting conditions prior to any alterations taking place. As soon as is practicable, but not later than six months after the date of the watercourse alteration or relocation, the zoning administrator shall notify FEMA of the changes by submitting appropriate technical or scientific data in accordance with the National Flood Insurance Program guidelines that shall be used to revise the Flood Insurance Rate Map, risk premium rates and floodplain management regulations as required.
- C. No change in the existing topography or drainage courses on any land shall be allowed which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to one (1) vertical. The construction of a retaining wall (stone, ties, brick or other material) five (5) feet or less from a property line may be specifically authorized by the plan commission and zoning agency and an agreement made between said plan commission and zoning agency and applicant stating that the method and purpose of construction will not in any way adversely affect drainage or aesthetics of the adjacent lot. A retaining wall greater than five (5) feet from a property line may be allowed pursuant to issuance of a zoning permit as long as said wall will serve to promote the purpose and intent as stated in this Ordinance. All retaining walls shall be set back at least seventy-five (75) feet from the ordinary high water mark of a navigable body of water and outside of the conservancy district unless the zoning administrator determines that the retaining wall is necessary to abate a known and identified soil erosion and sedimentation problem.

Fill or grading considered by the zoning administrator to be necessary backfill and/or

excavation for an otherwise permitted structure may be permitted without the necessity of securing a conditional use permit as long as said fill or grading is accessory to said construction and does not create slopes greater than three (3) horizontal to one (1) vertical and does not extend to a distance greater than thirty (30) feet from the foundation and does not divert runoff directly onto adjacent property or adversely affect adjoining property. In order to make such a determination, the property owner shall submit a grading plan of existing and proposed grades on the subject lot and adjacent lands where said accessory fill and/or grading is closer than twenty (20) feet to a property line. The fill must be located outside of an area designated as floodplain or wetland.

Land altering activities extending greater than thirty (30) feet from the foundation may be allowed subject to issuance of a minor grading permit (zoning permit) as provided for in section 3(d) 5.D. without benefit of a conditional use permit unless the quantities and the area of fill and grading exceed those limits defined herein for minor grading, filling and land altering activity. This provision excludes the area normally associated with septic system installation and normal driveway construction.

Further, no fill or alterations on existing topography shall be allowed under any circumstances, which will alter the drainage or topography in a way, which will adversely affect the surrounding lands. In making such a determination, the zoning administrator shall have the authority to determine the affect of the construction or fill on surrounding property and require improvements and/or facilities as may be in the best interest of preserving the topography and drainage system and which will have the effect of lessening the impacts on either upstream, downstream or adjacent properties. In case of a dispute or question arising as to the adversity or affect of the project on either the property owner, adjacent owners or the general public, said question shall be submitted to the Board of Adjustment for resolution to the question. Land altering activities may also be subject to locally adopted or State mandated Erosion and Sediment Control ordinances in addition to the requirements set forth herein.

- D. Streambank and Shoreline Stabilization: Streambank and shoreline stabilization structures and minor grading, filling and land altering activities associated with the stabilization structures may be permitted administratively in shoreland areas and without a conditional use permit and in conformance with best management practices promulgated by the Department of Parks and Land Use, Land Resources Division when located outside of conservancy/wetland areas, and within the regional flood and where the site is above the ordinary high water mark, subject to the following:

- i. Said project may be authorized administratively through the granting of a minor grading permit (zoning permit) when the following standards are satisfied:
  - a. Submittal of a complete and accurate set of plans which include a contour map at a scale of not less than 1" = 200' at a contour interval of at least two (2) foot increments, a vegetation plan and schedule, the period of construction activity, the methods used during and after

construction to provide protection from the forces of erosion and sedimentation upon adjacent land and waterbody, and how the project will relate to adjoining property.

- b. An administrative determination that the project has no public impact on or will not adversely affect adjacent or surrounding properties and that the activity will serve to prevent erosion and sedimentation of the surrounding area on the adjacent waterbody.
- c. The review and written approval, if necessary, of the WDNR, ACOE and FEMA.
- d. Entering into a stipulated agreement with the County concerning the scope of work, type of material used, method of construction, final grades, re-establishment of vegetative cover, date of completion and any other items deemed appropriate.
- e. The performance of such land altering activity must not impede drainage, reduce the floodwater storage capacity of the floodland, obstruct flows, or increase the regional flood elevation. If the proposed activity does not meet these standards, the project may be allowed subject to approval pursuant to section 4(g) 14 and rezoning in accordance with section 39. If the project would result in an increase in flood elevations, compensating flood storage capacity shall be provided on a one-to-one basis, which equals 100% replacement of any lost floodplain storage capacity.
- f. The project must not be located in a wetland.

### **SECTION 30**

Repeal and recreate Section 3(d)6 to read as follows:

- 6. (Reserved.)

### **SECTION 31**

Repeal and recreate Section 3(h)1.I to read as follows:

- I. Every structure, except boathouses and any other structure excepted from shore setback by another section of this Ordinance, shall have a shore setback of at least seventy five (75) feet from the ordinary high water mark of navigable waters, the floodplain, or the conservancy district, whichever distance is greater, except:
  - i. Boathouses may be permitted in accordance with Section 3(s) of this Ordinance.
  - ii. Boat hoists and piers may be erected on the bed of navigable waters pursuant to Chapter 30 of the Wisconsin Statutes and section 3(d) 6.C. of this Ordinance.

- iii. Under the authority of Section 59.692(1v), Wisconsin Statutes, the zoning administrator may grant a special zoning permit for a structure that extends closer than seventy five (75) feet to the ordinary high water mark of a navigable body of water if all of the following requirements are met, but in no case is a structure exempt from the shore setback requirements from the Conservancy District boundary line:
  - a. The part of the structure that is nearest to the water is located at least thirty five (35) feet landward from the ordinary high water mark.
  - b. The total floor area of all structures in the shore setback area of the property shall not exceed two hundred (200) square feet. In calculating the square footage, boathouses shall be excluded.
  - c. The structure that is subject to the request for special zoning permission has no sides or has open or screened sides.
  - d. The zoning administrator shall review a plan submitted by the applicant which shall be subject to the zoning administrator's approval and which will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least seventy (70) percent of half of the shore setback area that is nearest to the water. The zoning administrator is authorized to require implementation of the vegetative buffer plan prior to the issuance of the zoning permit for the structure.
- iv. A retaining wall shall be set back at least seventy five (75) feet from the ordinary high water mark of a navigable body of water and outside of the conservancy district and wetlands and may be allowed if the zoning administrator determines that the retaining wall is necessary to abate a known and identified soil erosion and sedimentation problem.
- v. A single stairway or walkway, determined by the zoning administrator to be necessary for access to a lake, pond or river, shall be permitted to have a shore setback of less than seventy five (75) feet provided the width of the stairway or walkway does not exceed three (3) feet.
- vi. Where there is an existing pattern of development with principal buildings having shore setbacks less than seventy five (75) feet from the ordinary high water mark of a navigable body of water or the Conservancy District boundary line, the setback requirements for new principal buildings or additions to the principal building or structures immediately adjacent thereto (such as decks or patios) shall be allowed to be reduced in accordance with the following setback averaging formulas, however, in no case shall the required minimum shore setback from the ordinary high water mark or Conservancy District boundary be reduced to less than thirty (30) feet:
  - a. If there is a building which is non-conforming with respect to shore setback with a similar use as the proposed building and located on an adjacent parcel on one side of the proposed building and within two hundred (200) feet of the proposed building, the average of the shore setback of that building of similar

use and the required minimum shore setback shall apply.

- b. If there are two buildings which are non-conforming with respect to shore setback with similar uses as the proposed building and located on adjacent parcels on each side of the proposed building and within two hundred (200) feet of the proposed building, the average of the shore setbacks of the two buildings of similar use shall apply.
  - c. In the case of a proposed addition to an existing building which has less than the required shore setback, the shore setback of the addition shall be calculated by the average of the existing building and the shore setback of an existing building with a similar use as the proposed addition if it is located on the adjoining parcel on the same side as the proposed addition and within two hundred (200) feet of the proposed addition.
  - d. In the case of a proposed addition to an existing building, which has less than the required shore setback, if there are not similar uses on either adjoining parcels, the shore setback of the addition shall be calculated by the average of the existing building and the required minimum shore setback.
  - e. The effect of the shore setback regulations in combination with the road setback regulations shall not reduce the buildable depth of such lot to less than thirty (30) feet. Where such reduction would result in a depth less than thirty (30) feet after applying the shore setback and road setback averaging formulas, the zoning administrator shall have the authority to modify the road setback, shore setback, and offset provisions to the extent necessary to minimize the encroachment on the offset and setback standards while maintaining the thirty (30) foot depth.
  - f. In applying these shore setback averaging formulas to a proposed principal building or addition to a principal building, the shore setback measurements shall be taken from other principal buildings only and the measurements shall not be from any immediately adjacent structures, such as decks or patios.
  - g. In applying these shore setback averaging formulas to a proposed structure, such as a deck or patio, which is immediately adjacent to the principal building, the shore setback measurements may be taken from other principal buildings or immediately adjacent structures, such as decks or patios.
- vii. A principal building, an addition to a principal building or a deck or patio immediately adjacent to a principal building may be located as close as fifty (50) feet from the Conservancy District boundary if it is in conformity with the required shore setback from the ordinary high water mark and if the existing natural ground elevation adjacent to the lowest level of the principal building, including an exposed basement, is at least three (3) feet above the regional flood elevation or the high water mark of the conservancy or wetland area.

## **SECTION 32**

Repeal and recreate Section 3(h)2.A.i to read as follows:

- i. (Reserved.)

## **SECTION 33**

Repeal and recreate Section 3(k)2. to read as follows:

**Residential parking:** Parking of vehicles accessory to a residential use shall be limited to those actually used by the residents or for temporary parking for guests. Vans or pick-up trucks used for private and recreational use or a motor home (recreational vehicle) or one (1) van or pickup truck used in a business or trade or used for transportation to and from a place of employment of the occupant may be parked on a residential property as long as such use does not become a nuisance to the neighborhood. A recreational vehicle must not be parked in the C-1 Conservancy District. A recreational vehicle, which is parked in an EFD Existing Floodplain Development Overlay District, must be fully licensed, operable and ready for highway use. A recreational vehicle is ready for highway uses if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

## **SECTION 34**

Repeal and recreate Section 3(m) to read as follows:

### **(m) Mobile Homes, Recreational Vehicles and Trailers**

1. **Human habitation prohibited:** Except within an approved mobile home park or camp, no recreational vehicle, trailer or mobile home, shall be used for the purpose of human habitation, human habitation being defined as entering the mobile home for any purpose other than maintenance.
2. A permit for one (1) continuous six (6) month period allowing the human habitation of a mobile home or recreational vehicle on lands other than an approved mobile home park may be granted by the town board provided:
  - A. The habitation is accessory to the current construction of a principal structure owned by the same person who is applicant for the permit.
  - B. The waste disposal facilities and water supply facilities are approved by the Waukesha County Department of Parks and Land Use, Environmental Health Division.
  - C. This use shall not be allowed in a floodway or wetland.
  - D. If located in a floodplain, the mobile home, trailer, or recreational vehicle shall have the lowest floor elevation to the flood protection elevation, shall be anchored so that it does not float, collapse or move laterally during a flood.

- E. If located in a floodplain, the mobile home, trailer, or recreational vehicle shall provide continuous dryland access as required in Section 8(b)2.B.v.
- 3. Storage prohibited: No mobile home in excess of twenty-five (25) feet in length shall be located or stored on any property except in an approved mobile home park, unless completely enclosed in a structure.
- 4. Mobile home parks: Such uses shall not be permitted except in accordance with section 4.

## SECTION 35

Repeal and recreate Section 3(o) to read as follows:

### (o) Legal Nonconformity

- 1. Existing use permitted: The existing lawful use of a building or premises at the time of the enactment of this ordinance or any amendment thereto may be continued although such use does not conform with the provisions of this ordinance for the district in which it is located, subject to conditions hereinafter stated and subject to conformance with s. 59.69(10) and (10m), Wisconsin Statutes.
- 2. Classification and regulation: For the purposes of administration, legal non-conformity shall be classified and regulated as follows:
  - A. *Non-conforming structures*:
    - i. No structure shall be modernized, expanded or enlarged except in conformity with the applicable district regulations or by order of the board of adjustment if such total repairs equal or exceed fifty (50) percent of the equalized assessed value.
    - ii. Where the damage to such a structure equals or exceeds fifty (50) percent of its equalized assessed value, it shall not be restored except in conformity with the applicable district regulations or by order of the board of adjustment.
    - iii. Nonconforming structures located in the floodplain shall be governed by the regulations of Section 8-Existing Floodplain Development Overlay District.
    - iv. The Zoning Administrator shall keep a record, which lists all known nonconforming structures and structures housing nonconforming uses, their equalized assessed value, the cost of all modifications or additions, which have been permitted, and the percentage of the structure's total equalized assessed value those modifications represent.
  - B. *Non-conforming use of structures and lands*:

- i. No such use shall be expanded or enlarged.
  - ii. Upon petition to and approval of the county zoning agency, such use may be changed to another use provided the zoning agency determines that the new use would not result in a greater degree of non-conformity than the current use.
  - iii. When any such nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months or eighteen (18) cumulative months during a three-year period, any future use of the land or structure shall conform to the use regulations of the applicable district.
  - iv. When the damage to a structure which houses such non-conforming use equals or exceeds fifty (50) percent of its equalized assessed value, it shall not be restored for any use except in conformity with the applicable district regulations.
  - v. Total structural repairs or alterations to a structure housing a non-conforming use shall not equal or exceed fifty (50) percent of the equalized assessed value of the structure.
  - vi. Nonconforming uses in a floodplain or a nonconforming use of a nonconforming structure in a floodplain are governed by the regulations of Section 8-Existing Floodplain Development Overlay District.
- C. *Non-conforming lots:* The size and shape of such lots shall not be altered in any way which would increase the degree of such non-conformity to the applicable district regulations.

3. Conditional use status: Subject to the provisions of section 4, conditional use status may be granted to existing legal non-conforming uses upon petition of the owner where such use is determined to be not adverse to the public health, safety, or welfare, would not conflict with the spirit or intent of the ordinance or would not be otherwise detrimental to the community and particularly the surrounding neighborhood. Such conditional use status shall be granted only with the approval of the plan commission and county zoning agency following a joint public hearing in the manner provided in section 40(b).

## SECTION 36

Repeal and recreate Section 3(s)1 to read as follows:

1. Use permitted: Boathouses, as defined by this ordinance and in section 30.01(1d) of the Wisconsin Statutes, are permitted in any district abutting a public or private body of water in which a single-family dwelling is permitted by right and subject to the terms and the conditions set forth herein and section 30.121 of the Wisconsin Statutes. Said boathouse



may be used for the storage of marine and accessory items used by the occupants of the lot. Said boathouse shall be placed on a permanent foundation extending below the frost line or a concrete slab and shall contain at least two hundred (200) square feet in area to be considered a boathouse

### **SECTION 37**

Repeal and recreate Section 3(s)4 to read as follows:

4. Building location: A boathouse shall not be located closer than five (5) feet to the ordinary high water mark or further than fifty (50) feet from the ordinary high water mark. A boathouse shall not be located within the floodplain and/or wetland. Its location relative to offsets shall be in accordance with the standards set forth in section 3(h) 2. of this ordinance.

### **SECTION 38**

Repeal and recreate Section 4(b)2 to read as follows:

2. Names and complete mailing addresses, including zip codes, of the owners of all properties within three hundred (300) feet of any part of the land included in the proposed change. When the project is to include a larger area and number of property owners and the applicant is the municipality or other governmental agency representing a large number of properties, the necessity of including names and addresses for the owners of land within three hundred (300) feet of the project area is not required although there must be a listing of all properties directly included by the project. Notice of hearing will only be required to be sent to the community, WDNR and other agencies of government as set forth elsewhere in this ordinance as well as the class 2 type notice to be published in the paper.

### **SECTION 39**

Repeal and recreate Section 4(b)5 to read as follows:

5. Where necessary, to comply with certain regulations established by the Wisconsin Statutes and the federal government, applications will be required to be submitted to the WDNR and the U. S. Army Corps of Engineers.

### **SECTION 40**

Repeal and recreate Section 4(d) to read as follows:

#### **(d) Final review and approval**

The county zoning agency shall review the proposal as submitted along with requirements as may be established by the WDNR and any applicable federal requirements. Any conditions as may be deemed necessary by the federal government, the state, the town plan commission or the county zoning agency shall be made an integral part of the permit. The applicant and any deviation shall comply with these conditions or alteration of the conditions set forth in the permit shall constitute a violation of the terms of the conditional use permit. Such violation shall constitute a violation of this ordinance and will be subject to prosecution and penalties under the terms of this ordinance. Notification of county zoning agency action on

conditional uses shall be sent to the WDNR within ten (10) days of the approval by the county zoning agency.

#### **SECTION 41**

Repeal and recreate Section 4(g)9.A to read as follows:

- A. No such use shall be permitted on a lot less than five (5) acres in area and no such use shall be permitted in a floodplain and/or wetland unless the applicable requirements of Section 7 of this Ordinance are met and all State and Federal permits are obtained.

#### **SECTION 42**

Repeal and recreate Section 4(g)14 to read as follows:

- 14. Land-altering Activities: Land-altering activities in excess of those limits set forth in section 3(d) 5. of this Ordinance may be permitted as a conditional use in any district, except the C-1 Conservancy District unless rezoned, in accordance with Section 39 of this Ordinance, to allow such activity.
  - A. Highway construction which may be exempted by Wisconsin statutes by a written Memorandum of Understanding between the WDNR and Department of Transportation for a specific highway project, home construction and the attendant limited grading and fill necessary to achieve positive drainage away from the foundation and dredging as may be allowed in section 3(d) 5. of this Ordinance and minor grading as defined in the Ordinance, shall be excluded from regulation under this provision, but may be regulated elsewhere under this Ordinance.
  - B. The above land-altering activities permitted as a conditional use shall be subject to the following:
    - i. Detailed plans, at a scale of not less than 1" = 100', of the project including areas to be graded, filled or otherwise altered along with seeding and/or vegetation plans and planting schedule and erosion and sedimentation practices to be employed shall be submitted for review and approval.
    - ii. No such use shall create flooding, concentrated runoff, inadequate drainage, unfavorable topography, excessive erosion and sedimentation, or restrict navigation in navigable waters.
    - iii. Such use shall comply with any ordinances or regulations established by a town and other county regulation as well as Chapter 30, 87, and 281 of the Wisconsin Statutes and any federal regulations.
    - iv. Such use conforms to sections 3(d) 4., 5. and 9. of this Ordinance.
    - v. If a rezoning is required, the procedure established in this Ordinance shall be complied with and the amendment to any other appropriate zoning district shall be approved.

- vi. The proposed grading and land-altering activities shall conform to the Waukesha County Storm Water Management and Erosion Control Ordinance and a permit under that ordinance must be received from the Waukesha County Department of Parks and Land Use, Land Resources Division prior to the issuance of the conditional use permit.

#### **SECTION 43**

Repeal and recreate Section 4(g)17.D to read as follows:

- D. Sewerage disposal field shall be located not closer than one hundred (100) feet from the ordinary high water mark.

#### **SECTION 44**

Repeal and recreate Section 4(g)17.E to read as follows:

- E. Fuel pumps shall be located two (2) feet above the regional flood elevation and be located outside of the floodway. Fuel storage tanks shall be located not closer than fifty (50) feet from the ordinary high water mark, shall be located above ground and shall be adequately screened and fireproofed. The offset requirements for fuel pumps shall be at least twenty (20) feet from the side lot line and storage tanks shall be located no closer than fifty (50) feet from any side lot line. All other locational requirements shall conform to the requirements of the district in which the use is located.

#### **SECTION 45**

Repeal and recreate Section 4(g)18 to read as follows:

- 18. Mobile home parks and camps: In any district other than the agricultural districts, conservancy, exclusive agricultural, suburban estate or residential districts subject to the following:
  - A. The provisions of all other trailer camp or mobile home ordinances shall be met.
  - B. No such use shall be allowed unless municipal sewerage facilities are used or unless the minimum lot size per family is one-half acre having a minimum width of not less than one hundred twenty (120) feet, offsets at twenty (20) feet and a setback of fifty (50) feet.
  - C. Owners or operators of all mobile home parks and camps shall provide adequate surface drainage to minimize flood damage, prepare and secure approval and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.
  - D. In existing mobile home parks, all new mobile homes on existing pads, and substantially improved homes shall have the lowest floor elevation to the flood protection elevation, be anchored so they do not float, collapse or move laterally

during a flood.

- E. New mobile home parks and camps are not allowed. Replacement and substantially improved manufactured homes shall meet the residential development standards provided in Section 8-Existing Floodplain Development Overlay District.

#### **SECTION 46**

Repeal and recreate Section 4(g)20.D to read as follows:

- D. The minimum lot area shall be determined by the number of units to be constructed. The number of units shall be based on a density of one (1) unit for each fifteen thousand (15,000) square feet of land area, exclusive of wetlands, floodplains, or lands zoned C-1. Where the use will be served by municipal sewage facilities, the density requirements can be increased to a minimum of ten thousand (10,000) square feet per unit and eight thousand (8,000) square feet if both municipal sewer and water service is available. The density may be further increased if the requirements of section 3(f) 4. are met. The width of the lot shall be increased as the size of the lot increases in order to avoid excessively long and narrow lots and shall, however, be no less than one hundred and eighty (180) feet in width. The amount of green space on the property, exclusive of parking areas, driveways, roads and other paved or impervious areas, shall be five thousand (5,000) square feet per unit.

#### **SECTION 47**

Repeal and recreate Section 4(g)23 to read as follows:

- 23. Private Clubs and Resorts: Without limitation because of enumeration, this category includes resorts and private clubs such as outdoor/indoor recreational facilities as defined herein, driving ranges, tanning booths, campgrounds, golf courses, beaches, yacht clubs, boarding stables, etc. These uses are permitted in any district, except that buildings and structures (including, but not limited to, the temporary or permanent placement of camping units) are not permitted within C-1 or A-E zoned districts, subject to the following;
  - A. No such use shall be permitted on a lot less than three (3) acres in area except in a restricted business or less restrictive district.
  - B. No building, other than one used only for residence purposes shall be closer than fifty (50) feet to the lot line of an adjoining lot in a district permitting residential use.
  - C. Off-street parking shall be provided as required by the Plan Commission adequate to meet the particular needs of the proposed use.
  - D. No such permitted use shall include the operation of a commercial facility such as a bar, restaurant or arcade except as may be specifically authorized in the grant of permit.

#### **SECTION 48**

Repeal and recreate Section 4(g)24 to read as follows:

- 24. Public and semi-public buildings and use: In any district except the C-1 Conservancy

District, subject to the following:

- A. Such use shall conform to the setback, height, and double the offset requirements of the district in which it is located.
- B. The height limitation may be extended to a maximum of fifty (50) feet provided the minimum required setbacks and offsets shall be increased two (2) feet for every additional foot of height in excess of the permitted maximum of that district.

## **SECTION 49**

Repeal and recreate Section 6(a) to read as follows:

(a) **Establishment of districts**

For the purpose of this ordinance, the county is hereby divided into zoning districts which shall be designated as follows:

- A-B Agricultural Business District.
- A-D Agricultural Density District.
- A-E Exclusive Agricultural Conservancy District.
- A-O Existing Agricultural Overlay District.
- A-P Agricultural Land Preservation District
- A-T Agricultural Land Preservation Transition District.
- A-1 Agricultural District.
- A-2 Rural Home District.
- A-3 Suburban Estate District.
- A-4 Country Estate District.
- A-5 Mini-Farm District.
- AD-10 Agricultural Density-10 District
- B-1 Restricted Business District.
- B-2 Local Business District.
- B-3 General Business District.
- C-1 Conservancy District.
- EC Environmental Corridor District.
- EFD Existing Floodplain Development Overlay District.
- M-1 Limited Industrial District.
- M-2 General Industrial District.
- P-I Public and Institutional District.
- Q-1 Quarrying District.
- R-1 Residential District.
- R-2 Residential District.
- R-3 Residential District.
- RRD-5 Rural Residential Density District

## **SECTION 50**

Repeal and recreate Section 6(b) to read as follows:

(b) **Zoning map**

1. Districts mapped: The boundaries of zoning districts are shown upon maps as referred to in section 3 of this Ordinance for all of the unincorporated towns of Waukesha County, and entitled Waukesha County Shoreland and Floodland Protection Ordinance Zoning Maps which are made a part of this Ordinance and adopted by reference.
  - A. Wetlands: The Final Wisconsin Wetlands Inventory Maps for Waukesha County, dated September 6, 1984 and subsequently amended, were utilized to assist in the preparation and identification of wetlands identified on the aerial photographs and accordingly are made a part of this Ordinance and are adopted by reference. All the notations, references and other information shown thereon shall be as much a part of this Ordinance as if the matters and information set forth by said maps were all fully described herein. Said maps shall be kept on file in the offices of the county zoning agency and are periodically updated as amendments are made, and are for general informational purposes only. For the purpose of local administration, a copy of the appropriate maps shall also be kept on file in the office of each town.

All other wetlands subsequently identified by the Zoning Administrator, Zoning Agency, SEWRPC, ACOE or the WDNR within the shoreland boundaries but not noted on the Wisconsin Wetland Inventory Maps, are subject to regulations contained in the C-1 Conservancy District. Said newly determined areas shall be noted on the Shoreland and Floodland Protection Ordinance Zoning Maps as a C-1 designated area within six (6) months of said determination.
  - B. Floodplains: The boundaries of the floodplains shall be those areas designated as such on the FEMA Flood Insurance Rate Maps, including all areas covered by the regional or base flood and those floodplains identified in the Floodplain Appendix or as depicted as C-1 Conservancy District, EFD Existing Floodplain Development Overlay District and A-E Exclusive Agricultural Conservancy District on the Waukesha County Shoreland and Floodland Protection Ordinance Zoning Maps referenced in Section 3(a) of this Ordinance, whichever boundary designates a greater floodplain area. Base flood elevations are derived from the corresponding flood profiles published by FEMA, Flood Insurance Study, effective date, November 19, 2008, or as amended or updated thereafter. Areas covered by the base flood are identified as numbered A-Zones on the Flood Insurance Rate Map. The Flood Insurance Study constitutes the basis for which the official floodplains and appropriate zoning categories for which unincorporated areas of Waukesha County have been mapped. This study has been approved by the WDNR and FEMA, and is on file in the office of the County Zoning Administrator. Regional flood elevations have been derived from other studies and are approved by WDNR. A list of the official floodplain maps to be used in conjunction with the Waukesha County Shoreland and Floodland Protection Ordinance Zoning Maps is listed as follows. These maps and revisions are on file in the office of the Waukesha County Zoning Administrator, in Waukesha County. If more than one map or revision is referenced, the most restrictive information shall apply.

Any change to the base flood elevations (BFE) in the Flood Insurance Study or on the Flood Insurance Rate Map must be reviewed and approved by the WDNR and FEMA before it is effective. No changes to regional flood elevations (RFE's) on non-FEMA maps shall be effective until approved by the WDNR.

**OFFICIAL MAPS : Based on the Flood Insurance Study**

Waukesha County Flood Insurance Rate Map (FIRM), panel numbers  
55133C0016F, 55133C0017F, 55133C0018F, 55133C0019F, 55133C0029F,  
55133C0033F, 55133C0034F, 55133C0036F, 55133C0037F, 55133C0038F,  
55133C0039F, 55133C0041F, 55133C0042F, 55133C0043F, 55133C0044F,  
55133C0053F, 55133C0054F, 55133C0059F, 55133C0061F, 55133C0062F,  
55133C0063F, 55133C0064F, 55133C0066F, 55133C0067F, 55133C0068F,  
55133C0069F, 55133C0078F, 55133C0079F, 55133C0083F, 55133C0086F,  
55133C0087F, 55133C0088F, 55133C0089F, 55133C0091F, 55133C0093F,  
55133C0131F, 55133C0132F, 55133C0133F, 55133C0134F, 55133C0141F,  
55133C0142F, 55133C0143F, 55133C0144F, 55133C0151F, 55133C0152F,  
55133C0153F, 55133C0154F, 55133C0156F, 55133C0157F, 55133C0158F,  
55133C0161F, 55133C0162F, 55133C0163F, 55133C0164F, 55133C0166F,  
55133C0167F, 55133C0168F, 55133C0169F, 55133C0176F, 55133C0177F,  
55133C0178F, 55133C0179F, 55133C0181F, 55133C0182F, 55133C0183F,  
55133C0186F, 55133C0187F, 55133C0188F, 55133C0189F, 55133C0191F,  
55133C0193F, 55133C0194F, 55133C0201F, 55133C0202F, 55133C0206F,  
55133C0207F, 55133C0208F, 55133C0214F, 55133C0216F, 55133C0217F,  
55133C0218F, 55133C0219F, 55133C0256F, 55133C0257F, 55133C0259F,  
55133C0270F, 55133C0280F, 55133C0285F, 55133C0290F, 55133C0291F,  
55133C0292F, 55133C0293F, 55133C0294F, 55133C0301F, 55133C0302F,  
55133C0303F, 55133C0304F, 55133C0306F, 55133C0307F, 55133C0308F,  
55133C0309F, 55133C0311F, 55133C0312F, 55133C0314F, 55133C0316F,  
55133C0317F, 55133C0318F, 55133C0319F, 55133C0326F, 55133C0327F,  
55133C0328F, 55133C0329F, 55133C0331F, 55133C0336F, 55133C0338F,  
55133C0339F, 55133C0385F, 55133C0405F, 55133C0406F, 55133C0407F,  
55133C0408F, 55133C0409F, 55133C0426F, 55133C0427F, 55133C0431F,  
55133C0432F, 55133C0451F, 55133C0452F, 55133C0453F,  
55133C0454F, dated November 19, 2008; with corresponding profiles that are  
based on the Flood Insurance Study (FIS) dated November 19, 2008, volume  
numbers 55133CV001A-003A;

Approved by: The WDNR and FEMA

**OFFICIAL MAPS: Based on other studies**

Official maps approved by the WDNR and FEMA, including flood profiles, floodway data tables, regional or base flood elevations and other information shall become official maps of this ordinance and shall be specifically listed herein as adopted by the Waukesha County Board.

The County shall provide the list of the official maps to the WDNR and FEMA regional offices for unincorporated areas of Waukesha County. Approved studies shall not be considered official maps herein until the land is rezoned according to Section 39 of this ordinance. Said areas must be rezoned and identified on the official zoning maps within 6 months of WDNR and FEMA approval.

- C. The A-O agricultural overlay district is a special kind of zoning district established to provide for superimposing upon basic districts additional permissive uses and regulatory standards without disturbing the basic underlying district regulations. As a special district, the applicable procedures for mapping amendments are those found in section 39, changes and amendments.
- D. The existing floodplain development overlay district (EFD) is an overlay zoning district established to superimpose upon the conservancy zoning district regulatory standards or special regulations which will apply to the underlying zoning district where it is found that such land areas do contain existing development and are located within the floodplain as herein defined. The mapping of this district shall be established pursuant to the procedures set forth in section 39, changes and amendments, of this ordinance.

- 2. Determination of boundaries: District boundaries shall be determined by measurement from and as shown on the official zoning maps and in case of any questions as to the interpretation of such boundary lines, the Zoning Administrator shall interpret the map according to the reasonable intent of this ordinance.

Unless otherwise specifically indicated or dimensioned on the maps, the district boundaries are normally lot lines; section, quarter section or sixteenth section lines; or the centerline of streets, highways, railways or alleys.

- 3. Determination of boundaries for C-1 Conservancy District, EFD Existing Floodplain Development Overlay District, and A-E Exclusive Agricultural Conservancy District: The boundaries of the C-1 Conservancy District, EFD Existing Floodplain Development Overlay District and A-E Exclusive Agricultural Conservancy District as drawn are intended to represent the edge of marsh lands, swamps, floodlands, wetlands or the ordinary high water mark along streams or other watercourses. Where a question arises as to the exact location of those boundaries, they shall be determined by the Zoning Administrator or the County Zoning Agency through the utilization of the best available information such as topographic maps, soil maps, aerial photographs, infield botanical inventories, floodplain studies or other sources of information available which would lend assistance to such a determination and may be finally determined by actual conditions in each specific situation. An appeal to this determination may be made in conformance with section 38 of this Ordinance. It is generally the intent of this Ordinance to place all wetlands and lands subject to inundation by the regional flood in either the C-1 district, A-E district, or EFD district if the areas are previously developed. Where land may be subject to inundation by the regional flood and a hydraulic and hydrologic analysis has not been prepared and/or the area is not indicated or mapped as floodplain, a detailed



hydraulic and hydrologic analysis shall be prepared and reviewed and found to be adequate by the WDNR or its designated agency, in which case the new floodplain data will be used in the administration of this Ordinance. The Zoning Administrator shall map these floodplain areas in appropriate zoning districts within six (6) months of the time the WDNR has determined the acceptability of the data and said mapping shall be done pursuant to section 39 of this Ordinance. Any changes or amendments in the mapped floodplains and made a part of this Ordinance shall be approved by the WDNR in accordance with the procedure set forth in section 39 of this Ordinance.

If an area is found that has not been previously identified or mapped as a floodplain or a wetland and not zoned as C-1 Conservancy, EFD Existing Floodplain Development Overlay or A-E Exclusive Agricultural Conservancy, or a determination of navigability is made and a stream is subsequently found to be navigable, said stream and any shoreland, wetland or floodplains as defined herein, shall immediately become subject to the provisions of this Ordinance. If the floodplain has not been determined, said area of approximate floodplain and wetlands shall be considered to be subject to the C-1, EFD and/or A-E regulations of this Ordinance. Appropriate procedures to establish Shoreland Zoning districts beyond that which is considered C-1 Conservancy, EFD Existing Floodplain Development Overlay or A-E Exclusive Agricultural Conservancy shall be initiated under the mapping amendment procedure pursuant to section 39 of this Ordinance and as set forth above. Water quality related standards of the Shoreland and Floodland Protection Ordinance are in effect immediately upon a determination of navigability or identification of a shoreland/wetland or floodplain (i.e., setback, grading, and land altering activities, vegetation removal).

4. Discrepancy of wetland boundaries: In the case of any discrepancy regarding a boundary between any mapped or newly determined wetland, the Zoning Administrator may make a determination or consult with the WDNR and coordinate the appropriate onsite investigation to determine the exact boundary. If the WDNR staff concurs with the Zoning Administrator that a particular area was incorrectly mapped as a wetland or vice versa, the Zoning Administrator shall have the authority to immediately deny or grant a zoning permit in accordance with the regulations applicable to the correct zoning district designation as it may be modified by such field determination. A notation shall be made on the map indicating that such a change has been made for future reference purposes. Utilizing the procedures above, if an area is found to be inappropriately mapped in a C-1 Conservancy, EFD Existing Floodplain Development Overlay or A-E Exclusive Agricultural Conservancy District category, the Zoning Administrator shall have the authority to designate a district for the subject area consistent with the upland category which may exist adjacent to the site without necessity of a formal amendment process and shall note said changes on the zoning map within 6 months of said determination.
5. Dispute or discrepancy of floodplain boundaries: In the case of any dispute or discrepancy regarding a boundary between an official zoning map and actual field conditions locating the floodplain boundary, the criteria in paragraphs (a) or (b) shall be used. If a significant difference exists, the map shall be amended according to Section 39 of this ordinance. Where the flood profiles are based on established base

flood elevations from a Flood Insurance Rate Map, FEMA must also approve any map amendment. The Zoning Administrator can rely on a boundary derived from a flood profile elevation to grant or deny a permit, whether or not a map amendment is required. The Zoning Administrator shall be responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined and for initiating any map amendments required under this section. Disputes between the Zoning Administrator and an applicant over the district boundary line shall be settled according to Section 38 of this ordinance and the criteria in (a) and (b) below.

- a. If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.
- b. Where flood profiles do not exist, the location of the boundary shall be determined by the map scale, visual on-site inspection and any information provided by the WDNR, and/or FEMA.

## **SECTION 51**

Repeal and recreate Section 7 to read as follows:

### **SECTION 7 C-1 CONSERVANCY DISTRICT**

#### **(a) Applicability**

This district includes all shoreland areas that are considered wetlands and/or floodplains as defined in this Ordinance and as mapped and/or determined as wetlands and/or floodplains in Sections 3(a) and 6(b) of this Ordinance.

#### **(b) Purpose and intent**

This district is intended to preserve and protect environmentally sensitive lands by limiting the uses and intensity of uses that may be placed upon them to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty and to control building and development in said conservancy areas whenever possible. When development is permitted, it shall occur in a manner that minimizes adverse impacts upon the area in question.

These lands are often in a natural, relatively undisturbed state and shall include wetlands, marshlands, swamps, floodlands and areas up to the ordinary high water mark along streams or other navigable water.

#### **(c) Use regulations**

1. Permitted uses: The provisions of Section 7(c)2 must be met for all permitted uses that involve development, as defined in this ordinance.
  - A. Hiking, fishing, trapping, hunting, swimming and boating, harvesting of wild crops such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds in a manner that is not injurious to the natural reproduction of such crops.

- B. Pasturing of livestock and the construction and maintenance of fences, provided no filling, flooding, draining, dredging, ditching, tiling or excavating is done.
- C. The practice of silviculture including planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavation is done except as required to construct and maintain roads which are necessary to conduct silvicultural activities which cannot, as a practical matter, be located outside the C-1 Conservancy District and which are designed and constructed to minimize the adverse impact upon the natural functions of the conservancy area or except as required for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact upon the conduct of silvicultural activities if not corrected. Where such silvicultural practices will take place on areas larger than five (5) acres in size, a forest management plan prepared in cooperation with a state forester shall be submitted to and approved by the Waukesha County Department of Parks and Land Use, Land Resources Division and the zoning agency prior to its implementation. All fill material must be removed from the conservancy zoned lands after any temporary silvicultural activities are completed.
- D. The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding or artificial drainage of any wetlands through ditching, tiling, dredging or excavating. Where ditching and drainage for agricultural purposes is to take place outside of a wetland but within the C-1 Conservancy District, said work may be permitted subject to review and approval by the Waukesha County Department of Parks and Land Use, Land Resources Division and the zoning agency without the benefit of a conditional use permit. Construction and maintenance of roads shall be permitted if the roads are necessary for agricultural cultivation and cannot be located outside the conservancy area and are designed and constructed to minimize the adverse impact upon the natural functions of any wetland area. No new drainage systems will be permitted in wetlands. Sod farms will be allowed subject to review and approval of a conservation plan by the Waukesha County Department of Parks and Land Use, Land Resources Division and the zoning agency.
- E. The maintenance and repair of existing agricultural drainage systems, including ditching, tiling, dredging, excavating and filling necessary to maintain the level of drainage required to continue any existing agricultural use. This includes the filling attendant to the disposal of dredged spoil material adjacent to the drainage systems provided that dredged spoil is placed on existing spoil bands where possible or immediately adjacent to the ditches or removed from the conservancy area altogether.
- F. Functionally water-dependent uses, such as docks, piers or wharves, flowage areas, water monitoring devices, culverts, navigational aids and river crossings of transmission lines, and pipelines, including limited excavating

and filling necessary for such construction and maintenance, that comply with Ch. 30 of the Wisconsin Statutes and any applicable federal regulations. Commercial docks, piers, moorings and wharves are permitted subject to issuance of a Conditional Use Permit under Section 4(g)17. and 23. of this Ordinance.

- G. Dam construction, operation, maintenance, and abandonment, provided a Conditional Use Permit is obtained in accordance with section 4 of this ordinance and all applicable permits are obtained from the WDNR pursuant to Ch. 31 of the Wisconsin Statutes and from the ACOE pursuant to federal requirements.
- H. Maintenance, repair, replacement, reconstruction or new construction of town, county and state streets, highways and bridges, including limited excavating and filling as necessary. Adequate floodproofing measures shall be provided to the flood protection elevation as identified in Section 8(c) and the standards of Section 3(d)5.A. of this ordinance shall be met. Bridge projects must be completed pursuant to Chapters 30 and 31 of Wisconsin Statutes and any other local, state and federal requirements.
- I. The establishment and enhancement of public and private parks and recreation areas, wilderness or walk-in unimproved boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and wildlife habitat areas provided that no filling is done in the C-1 Conservancy District and that no other improvements and/or construction occurs within a wetland area. The owner or operator of any new private park, recreation or wildlife area to be located in a C-1 Conservancy District shall be required to notify the county zoning agency of the proposed project before beginning any development activities. Unsided and open shelters may be permitted within a floodplain, but outside of the wetland area. Ditching, excavating, dredging, and dike construction may be allowed in said areas for the purpose of improving wildlife habitat or to otherwise enhance wildlife values provided all necessary state and federal permits are obtained and said activities shall only be approved after review and approval and issuance of a conditional use permit. Roads to service recreational uses, launching ramps, hiking and riding trails may be permitted but said roads, ramps and trails may not include filling or other construction activity within wetlands without WDNR and ACOE approvals, if required, and shall not impact the storage or flow of surface water and flood water. Said filling and construction activity which may be located within a C-1 conservancy zoning district will be subject to conditional use procedures contained herein.
- J. The construction and maintenance of electric, gas, telephone, cable, fiber optic, water and sewer transmission and distribution facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members and the construction or maintenance of railroad lines provided that:
  - i. The transmission and distribution facilities and railroad lines cannot,

as a practical matter, be located outside the C-1 Conservancy District. Structures shall not be located in the floodway, and if located in the floodfringe, adequate floodproofing measures shall be provided to the flood protection elevation and the standards of Section 3(d)5.A. of this ordinance shall be met.

- ii. Such construction or maintenance is done in a manner designated to minimize adverse impact upon the natural functions of the wetland. Major electrical generative facilities and high voltage transmission lines that have obtained a certificate of public convenience and necessity under section 196.491, Wisconsin Statutes, are not subject to the requirements of this ordinance.

- K. The construction or maintenance of nonresidential buildings provided that the building is essential for and used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals or some other use permitted in the conservancy district. Wherever possible, said buildings shall be located outside of the wetland, and such building may not be used for human habitation and shall not exceed five hundred (500) square feet in floor area. Limited filling and excavating necessary to provide structural support for the building is permitted. Where the use is intended for commercial purposes, said use and buildings shall be subject to the provisions of section 4(g)9.

2. Standards for development:

- A. General standards of development for the above permitted uses in the C-1 Conservancy District:
  - i. Any development in the floodplain shall comply with Section 3(d)5. and shall not have a high flood damage potential, as defined in this ordinance. If the standards of Section 3(d)5. are not met, the area shall be rezoned in accordance with Section 39.
  - ii. Applicants shall provide the following data to determine the effects of the proposal according to the standards set forth in Section 3(d)5.A:
    - a. A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or
    - b. An analysis calculating the effects of this proposal on regional flood height.
  - iii. Any development in the floodplain shall comply with the application requirements of Section 3(c)2.
  - iv. In addition to the lowest floor elevation and fill requirements of this ordinance, any structure must meet the floodproofing standards in

Section 8(c).

- v. The Zoning Administrator shall deny the permit application if the project will increase flood elevations upstream or downstream based on data submitted pursuant to par. ii, iii and iv above. If an increase in the flood elevation is proposed, the project must be reviewed in accordance with Section 4(g)14. as a Conditional Use and a Rezone must be obtained in accordance with Section 39. Compensatory floodplain storage must be provided as required in Section 3(d)5.A.
- vi. The applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that floodproofing measures meet the requirements of Section 8(c).
- vii. Floodplain Certificate of Compliance: No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a Floodplain Certificate of Compliance is issued by the Zoning Administrator, except where no permit is required, subject to the following provisions:
  - a. The Floodplain Certificate of Compliance shall show that the building or premises or part thereof, and the proposed use, conform to the floodplain provisions of this ordinance;
  - b. If all provisions are met, the Floodplain Certificate of Compliance shall be issued within 10 ft. days after written notification that the permitted work completed. The Zoning Administrator shall issue the Floodplain Certificate of Compliance to the Town Building Inspector and a copy of the Floodplain Certificate of Compliance to the applicant.

B. Structures accessory to permanent open space uses or functionally dependent on a waterfront location may be allowed by permit if the use is a permitted use in the C-1 Conservancy District, and the structures comply with the above standards for development and the following criteria:

- i. The structure is not designed for human habitation and does not have a high flood damage potential, as defined in this Ordinance;
- ii. The structure must be anchored to resist flotation, collapse, and lateral movement;
- iii. Mechanical and utility equipment must be elevated or flood proofed to or above the flood protection elevation; and

- iv. The structure must not obstruct flow of flood waters, cause any increase in flood heights during the occurrence of the regional flood or affect the storage capacity of the floodplain.
- C. Fill or deposition of materials may be allowed by minor grading or conditional use permit if the use is a permitted use in the C-1 Conservancy District, and if the activity complies with the above standards of development and the following criteria:
  - i. The standards set forth in Section 3(d)5.A. are met; and
  - ii. No material is deposited in the navigable channel unless a permit is issued by the WDNR pursuant to Ch. 30, Wisconsin Statutes, and a permit pursuant to s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable; and
  - iii. The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading, or other approved measures; and
  - iv. The fill is not classified as a solid or hazardous material.
- 3. Specific prohibition: Any uses not permitted above are considered to be prohibited, including, but not limited to, the following uses, unless the area is rezoned to another appropriate district in accordance with the provisions of Section 39 of this ordinance.
  - A. Habitable structures, including modular homes, mobile homes and recreational vehicles; structures with high flood damage potential, as defined in this ordinance; and those structures not associated with the permitted uses in the C-1 Conservancy District;
  - B. Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
  - C. Uses not in harmony with or detrimental to uses permitted in the adjoining districts;
  - D. Any new or addition to existing private or public sewage systems and permanent or portable toilets in the floodway, except where an addition to a system has been ordered by a government agency to correct a hazard to public health. Any replacement, repair or maintenance of an existing private sewage system in a floodway shall meet the applicable requirements of other ordinances and Chapter COMM 83, Wisconsin Administrative Code;
  - E. Any new public or private wells and appurtenant structures, which are used to obtain potable water, except those for recreational areas that meet the requirements of other ordinances, the development standards of Section

7(c)2, and Chapters NR 811 and NR 812, Wisconsin Administrative Code. Any replacement, repair or maintenance of an existing well shall also meet the requirements of all other ordinances and Chapters NR 811 and NR 812, Wisconsin Administrative Code.

- F. Any solid or hazardous waste disposal sites;
- G. Any wastewater treatment ponds or facilities, except those permitted under s. NR 110.15(3)(b), Wis. Adm. Code; and
- H. Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside of the floodplain, which complies with the regulations of this ordinance.

4. Area Regulations:

There are no specific minimum lot size requirements although conservancy zoned lands that lie within a larger parcel or tract of land, the remainder of which is zoned in any other district, shall have a minimum area requirement of that non-conservancy district.

5. Additional requirements for variances in the floodplain:

- A. Any variance granted on a property located in the floodplain shall meet the following additional criteria:
  - i. May not cause any increase in the regional flood elevation.
  - ii. May not increase the amount of obstruction to flood flows.
  - iii. The variance shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the ordinance.
  - iv. The floodproofing measures and EFD Existing Floodplain Development Overlay District standards required in this ordinance, NR 116 of the Wisconsin Administrative Code and FEMA regulations must be met.

When a floodplain variance is granted, the Board of Adjustment shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property. A copy shall be maintained with the variance record.

- B. In a floodway, any modification or addition to a nonconforming structure or any structure with a nonconforming use may only be allowed with approval by the Waukesha County Board of Adjustment as a variance and pursuant to the above additional requirements for variances in the floodplain. If the



Board of Adjustment grants said variance, the Board of Adjustment must require that an addition to the existing structure be floodproofed, pursuant to Section 8(c), by means other than the use of fill, to the flood protection elevation; and

If an enclosed structure used for parking and limited storage has a foundation partially below the flood protection elevation, the enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square foot of an enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade and the parts of the foundation below the flood protection elevation must be constructed of flood-resistant materials. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation.

## **SECTION 52**

Repeal and recreate Section 8 to read as follows:

## **SECTION 8 EFD EXISTING FLOODPLAIN DEVELOPMENT OVERLAY DISTRICT**

### **(a) Purpose and intent**

The purpose and intent of this district is to provide for the continued use of improved properties that lie within the floodplain and which are considered prohibited structures in Section 7. With the preparation of new floodplain data where such information was previously not available for many reaches of the various waterways in Waukesha County, it is becoming more apparent that small concentrations of development lie within the floodplains, which may not have been previously recognized as floodplain. Accordingly, it is recognized that these improvements represent the substance of many landowners' businesses, families' estates, and principal residences. Therefore, the intent of this section is to recognize existing uses and structures and regulate them in accordance with sound floodplain management practices while protecting the overall water quality of the river system.

It is further the intent of these provisions to regulate and diminish the proliferation of non-conforming structures and uses in floodplain areas and to regulate said reconstruction, remodeling, conversion and repair with the overall intent of lessening the public responsibilities attendant to the continued and expanded development of land and structures which are inherently incompatible with natural floodplains and to lessen the potential danger to life, safety, health and welfare of persons whose lands are subject to the hazards of floods.

The provisions for this overlay district shall apply to all floodplains where specifically mapped and where structures are in existence as of the date of this provision (date of adoption December 17, 1981) based upon available flood data. As more detailed hydrologic and flood data becomes available and floodways and floodplains are more definitively identified, such portions of land areas where structures exist may be placed into this overlay district subject to the amendment procedures as set forth in section 39 of this ordinance.

The degree of flood protection intended to be provided by this ordinance is considered

reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the regional floodplain or land uses permitted within such areas will always be totally free from flooding or flood damages, nor shall this ordinance create a liability on the part of or a cause of action against the County of Waukesha or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

(b) **Use regulations: Permitted Uses**

1. Any use as permitted in the C-1 Conservancy district or the A-E Exclusive Agricultural Conservancy district.
2. Structures and uses, including principal as well as accessory uses and structures existing at the time of adoption of this provision, subject to compliance with the following:
  - A. Except as provided in subsection B below, if an existing legal nonconforming structure or any structure with a nonconforming use is destroyed or substantially damaged, it cannot be repaired or reconstructed unless the use and the structure meet the current ordinance requirements. For purposes of this section, a structure is considered substantially damaged if the total cost to repair or reconstruct the structure to its pre-damaged condition equals or exceeds 50% of the structures present equalized assessed value. For purposes of valuing the cost to repair or reconstruct the nonconforming structure, the cost of elevating the structure to the flood protection elevation and the cost of ordinary maintenance shall not be included. Ordinary maintenance includes painting, decorating, paneling and the replacement of doors, windows and other nonstructural components of the same size and location, and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Any such structure that is destroyed or substantially damaged must meet the following standards:
    - i. The structure is not located in a floodway.
    - ii. The elevation of the lowest floor of a principal structure including an attached garage, excluding those basements or crawlspaces that are 5 ft. or less in height, shall be placed at or above the flood protection elevation and reconstruction may only occur on the same foundation or newly constructed foundation which represents no greater an encroachment or extension of the previously existing structure other than vertically. Said foundation shall be floodproofed and certified as set forth herein. Fill shall be used to elevate the lowest floor, excluding those basements or crawlspaces, 5 ft. or less in height, so as to meet the above. Basements or crawlspaces that are 5 feet or less in height must comply with the provisions of section 8(b)2.A.iii below. The fill surrounding the structure shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the

limits of the structure. The fill shall not negatively alter floodwater conveyance or increase flood heights. Where such distance cannot be achieved because of lot lines, elevations of existing streets or sewer lines, flood impacts, or other similar constraints, said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be floodproofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by an architect or professional engineer registered in the State of Wisconsin and be authorized by the WDNR. Other methods may be used, as long as they are certified as set forth above, which are designed to the flood protection elevation for the particular area in question. All floodproofing measures shall at a minimum provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified, as above, that the floodproofing measures are adequately designed to protect the property to the flood protection elevation for the subject area. (Cross reference-Flood protection elevation, defined in section 2(b)).

- iii. If any such structure has a basement or crawlspace which is 5 ft. in height or less and which is not useable as living area, the surface of the floor of the basement or crawlspace shall be at or above the regional flood elevation. Heating, ventilation, air conditioning, electrical and gas equipment shall be at or above the flood protection elevation. In any case, the basement or crawlspace shall be floodproofed in accordance with section 8(c) to the flood protection elevation so that floodwater cannot enter directly over the ground surface into such basement or crawlspace.
- iv. The elevation of the lowest floor of an accessory structure, which is not connected to a principal structure, shall be constructed with its lowest floor a minimum of one (1) ft. above the regional flood elevation.
- v. There shall be contiguous dry land access to all structures and uses affected by these regulations and as determined by the Zoning Administrator, dry land access to be considered a vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above the regional flood elevation and wide enough for wheeled rescue and relief vehicles.

In developments where existing street or sewer line elevations make compliance with Section 8(b)A.v. impractical, a permit may be issued where access roads are at or below the regional flood elevation, if the

municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or the municipality has a natural disaster plan approved by Wisconsin Emergency Management and the WDNR.

- vi. All private sewage systems and private wells shall be floodproofed to the flood protection elevation pursuant to Section 8(c) of this ordinance and shall conform with the provisions of the Waukesha County Code of Ordinances and Wisconsin Administrative Codes where applicable to such facilities.
  - vii. A structure may be reconstructed or rebuilt which has less than the minimum floor area and open space requirements set forth in the R-3 residential district. If a larger floor area than previously existed is desired or the previous floor area ratio exceeded the R-3 residential district requirements, reconstruction or enlargement (vertically only) may not exceed the floor area ratio requirements set forth in the R-3 residential district. Offset and setback requirements of the R-3 district shall apply.
  - viii. Where more than one (1) principal building, as defined in this Ordinance, exists on a single property and one (1) or more of said buildings is destroyed or damaged beyond fifty (50) percent of their current equalized assessed value as heretofore set forth, the reconstruction, or repair of only one (1) of such buildings is allowed. Where only one (1) principal building on a property exists, is destroyed or damaged as set forth above, the reconstruction or repair of that building would not be allowed unless all other principal buildings were removed. The intent of this provision is to allow for the reasonable use of the developed floodplain lands but not to the degree of intensity which may have existed prior and so that the intensity of use of floodplain lands will be diminished.
  - ix. The structure will meet all of the minimum requirements under applicable FEMA regulations (44 CFR Part 60), or the regulations promulgated thereunder.
  - x. The development standards of Section 7(c).2.A. and C must be complied with.
- B. If an existing legal nonconforming structure or a structure with a nonconforming use is substantially damaged or destroyed by a nonflood disaster, as defined in this ordinance, the repair or reconstruction of any such nonconforming structure may be permitted in order to restore it after the nonflood disaster, provided that the nonconforming structure will meet all of the minimum requirements under applicable FEMA regulations at 42 USC 4001 to 4219, 44 CFR Part 60.3 regarding floodplain management criteria for flood-prone areas, or the regulations promulgated thereunder.

For the convenience of the reader, the regulations of 44 CFR 60.3 are summarized below, however, the reader is directed to the Code of Federal Regulations for the specific language of the regulation.

44 CFR 60.3(a):

- (a)1 requires permits for all proposed construction or other development,
- (a)2 requires all necessary permits from governmental agencies as required by federal or state law,
- (a)3 requires a determination that the proposed building site will be reasonably safe from flooding,
- (a)4 requires review of subdivision proposals and other proposed new development to determine that the proposal will be reasonably safe from flooding,
- (a)5 requires water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems, and
- (a)6 requires new and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters.

44 CFR 60.3(b):

- (b)1 requires permits for all proposed construction or other development,
- (b)2 requires the application of the standards set forth in (a)2, 3, 4, 5, and 6,
- (b)3 requires that all new subdivision proposals and other proposed developments greater than 50 lots or 5 acres, whichever is the lesser, include data regarding base flood elevations,
- (b)4 requires utilization of base flood elevation and floodway data as criteria for requiring that new construction, substantial improvements, or other development meet the standards in (c)2, 3, 5, 6, 12, 14, and (d)2 and 3,
- (b)5 requires that where base flood elevation data is utilized, the elevation of the lowest floor of all new and substantially improved structures shall be obtained and if the structure has been floodproofed, the elevation of the floodproofing shall be obtained and a record of the information shall be kept,
- (b)6 requires notification for any alteration or relocation of a watercourse,
- (b)7 requires maintenance of the flood carrying capacity within an altered or relocated watercourse, and
- (b)8 requires that all manufactured homes shall be installed using methods and practices which minimize flood damage.

44 CFR 60.3(c):

- (c)1 requires compliance with subsection (b),
- (c)2 requires that all new construction and substantial improvements of residential structures to be elevation to or above the base flood level,
- (c)3 requires that all new construction and substantial improvements of non-residential structures have the lowest floor elevation to or above the base flood level, or be designed to be watertight,
- (c)4 requires that where a non-residential structure is intended to be watertight below the base flood level, a registered professional engineer or architect conducts a specified review and certification,
- (c)5 requires for all new construction and substantial improvements that fully

enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters,

(c)6 requires that manufactured homes be located on specifically listed sites and requires elevation criteria for a manufactured home that has incurred substantial damage as a result of a flood,

(c)7-9 do not apply to Waukesha County,

(c)10 requires, until a regulated floodway is designated, that no new construction, substantial improvements or other development is permitted unless the cumulative effect will not increase the water surface elevation of the base flood more than one foot,

(c)11 does not apply to Waukesha County,

(c)12 requires that manufactured homes, not included in the provisions of subsection (c)6, meet specific elevation requirements,

(c)13 provides that a community may apply for a conditional FIRM revision from FEMA for certain developments which increase the water surface elevation of the base flood by more than one foot, and

(c)14 requires that recreational vehicles meet specific requirements in order to be placed within a floodplain.

#### 44 CFR 60.3(d)

(d)1 requires compliance with subsection (c) 1-14,

(d)2 requires the adoption of a regulatory floodway,

(d)3 requires a prohibition on encroachments within the floodway unless it is proven that the proposed encroachment would not result in any increase in flood levels, and

(d)4 allows a community to permit encroachments in the regulatory floodway by obtaining a conditional FIRM and floodway revision from FEMA.

For the purposes of this subsection only, “lowest floor” has the meaning as defined in 44 CFR 59.1, which is “lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement area, is not considered a buildings lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements.”

For the purposes of this subsection only, “basement” has the meaning as defined in 44 CFR 59.1, which is “any area of the building having its floor subgrade (below ground level) on all sides.”

If an existing legal nonconforming structure or a structure with a nonconforming use is damaged due to a nonflood disaster and the valuation to repair such damage would not exceed 50% of its current equalized assessed value (as computed over the life of the structure and including past improvements) said structure may be restored to its condition before the damage occurred. If modifications or additions are proposed, which are

unrelated to restoring the structure's condition before damage, the provisions of Section 8(b)2.C must be met.

- C. Where a structure, which was not damaged or destroyed, lies within the floodplain but outside of the floodway, no modification or addition to such structure shall be permitted unless it conforms with the following standards. For the purpose of this section, the words "modification" and "addition" shall include, but not be limited to, any alteration, addition, modification, structural repair, rebuilding, replacement or lateral enlargement of any such existing use or structure, principal or accessory. Modification shall also refer to the conversion of various living spaces or other floor areas into space for living purposes such as converting a part of a living room into a bedroom or bathroom regardless of whether such changes require structural alteration to the basic structures. Ordinary maintenance repairs are not considered an extension, modification or addition; these including painting, decorating, paneling, replacement of doors, windows and other non-structural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities.
- i. The structure is not located in a floodway. Modifications and additions to a structure located in the floodway are prohibited.
  - ii. The modification or addition to a structure may not decrease floodwater conveyance or storage capacities. Said modification or addition to a structure shall not extend laterally from the structure so as to extend into the floodplain but may be allowed to go above existing floors of the structure. One (1) detached garage or shed, not including a boathouse, may be permitted if all other applicable ordinance requirements are met provided that there is no area outside of the floodplain to locate said building and provided that all provisions of this section are met.
  - iii. The provisions of subsection 8(b)2.A.ii., iii., iv., v., vii., ix., and x shall be complied with. Only 1 principal structure on a lot will be allowed to be modified or altered in accordance with the intent of subsection A.viii. above.
  - iv. The provisions of subsection 8(b)2.A.vi. shall be complied with. Where a modification or addition requires a larger waste disposal system than what exists (i.e., additional bedrooms), it shall be demonstrated to the zoning administrator that a new or expanded waste disposal system can be provided and a county sanitary permit granted, meeting the requirements of the Waukesha County Sanitary Code and the Wisconsin Administrative Code, where applicable, prior to the issuance of a zoning and building permit for such alterations to the structure. Such new, improved or enlarged waste disposal system shall be required to be installed concurrently with the construction or prior to occupancy of the altered structure.

The intent of this provision is to allow only those additions and modifications which can be accommodated with an onsite waste disposal system, which will comply with contemporary standards for waste disposal and which will result in improved systems which will be adequately protected from flooding and which will accommodate said structures and their improvements.

- D. Conversion of residences from seasonal use to year round use will not be allowed unless all of the conditions set forth in section 8(b) 2.C above are met. Conversions of this nature will require a zoning permit and inspection to determine conformance with the above-cited subsection.
- E. A nonconforming historic structure may be altered if the alteration will not preclude the structures continued designation as a historic structure, the alteration will comply with Section 7(c)2.A., flood resistant materials are used, and construction practices and floodproofing methods that comply with Section 8(c) are used.
- F. Existing storage yards, surface parking lots and other such uses may remain at an existing elevation which is below the flood protection elevation if an adequate warning system exists to protect life and property and if the storage of materials as identified in Section 8(b)2.H are floodproofed in accordance with Section 8(c).
- G. A manufacturing or industrial type structure shall be protected to the flood protection elevation using fill, levees, floodwalls, or other flood proofing measures in section 8(c).
- H. Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish, or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with Section 8(c). Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.
- I. The provisions set forth above and related to reconstruction, modification, remodeling and additions, shall conform with all other requirements and provisions of this Ordinance, except as may be allowed to be modified as set forth in section 8 of this Ordinance.
- J. Any repairs, reconstruction, modifications, additions, or lateral extension of structures which may be prohibited above may be allowed only with approval by the Waukesha County Board of Adjustment in accordance with the procedures established in section 38 of this Ordinance. The Board of Adjustment in granting said variance shall determine whether the spirit and intent of the ordinance will be upheld by granting said variances from the provisions regulating the continued or intensified use of lands which are located in floodplains and whether the public health, safety and welfare will be in any way jeopardized through the granting of said variances.



- K. Any variance granted on a property located in the floodplain shall meet the following additional criteria:
- i. May not cause any increase in the regional flood elevation.
  - ii. May not increase the amount of obstruction to flood flows.
  - iii. The variance shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the ordinance.
  - iv. The floodproofing measures and EFD Existing Floodplain Development Overlay District standards required in this ordinance, NR 116 of the Wisconsin Administrative Code and FEMA regulations must be met.

When a floodplain variance is granted, the Board of Adjustment shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property. A copy shall be maintained with the variance record.

- L. In a floodway, any modification or addition to a nonconforming structure or any structure with a nonconforming use may only be allowed with approval by the Waukesha County Board of Adjustment as a variance and pursuant to the above additional requirements for variances in the floodplain. If the Board of Adjustment grants said variance, the Board of Adjustment must require conformance with the provisions of Section 8(b)2.K. and an addition to the existing structure must be floodproofed, pursuant to Section 8(c), by means other than the use of fill, to the flood protection elevation; and

If an enclosed structure used for parking and limited storage has a foundation partially below the flood protection elevation, the enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square foot of an enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade and the parts of the foundation below the flood protection elevation must be constructed of flood-resistant materials. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation.

- M. In the administration of the above standards, it is required that various standards set forth above shall be subject to review and approval by the zoning administrator upon submittal of appropriate data and information necessary to determine compliance with the above regulations.

(c) **Floodproofing standards**

No permit or variance shall be issued for a structure and/or improvement that requires the following floodproofing measures be utilized until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to the flood protection elevation and shall also comply with the following criteria:

1. Floodproofing measures shall be designed to:
  - A. Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;
  - B. Protect structures to the flood protection elevation;
  - C. Resist flotation and lateral movement by anchoring structures to foundations; and
  - D. Insure that structural walls and floors are watertight to the flood protection elevation, and that the interior remains completely dry during flooding without human intervention.
2. Floodproofing measures could include, but are not limited to:
  - A. Reinforcing walls and floors to resist rupture or collapse caused by water pressure.
  - B. Adding mass or weight to prevent flotation.
  - C. Installing watertight doors, bulkheads and shutters.
  - D. Using paints, membranes or mortars to reduce seepage of water through walls.
  - E. Placing essential utilities above the flood protection elevation.
  - F. Installing surface or subsurface drainage systems to relieve foundation wall and basement floor pressures and to lower water levels in structures.
  - G. Constructing water supply wells and waste treatment systems to prevent the entry of flood waters.
  - H. Constructing structures to resist rupture or collapse caused by water pressure or floating debris.
  - I. Putting cutoff valves on sewer lines or eliminating gravity flow basement drains.

## SECTION 53

Repeal and recreate Section 9(b)1 to read as follows:

1. Any uses permitted in C-1 Conservancy District.

## SECTION 54

Repeal and recreate Section 10(b) to read as follows:

### (b) Use regulations: Permitted uses

1. Any uses and structures permitted in the C-1 Conservancy district and if located in a wetland or floodplain, the provisions of Section 7(c)2 must be met.
2. Ordinary farm uses, including dairying, livestock, poultry raising and truck farming.
3. Accessory uses within buildings normally associated with permitted agricultural operations including single-family dwellings and shelters for housing animals, except that no structure shall be located in a floodplain or upon lands not suited due to soil limitations. Any existing structures within floodlands must conform to section 8 of this Ordinance.
4. Nurseries, greenhouses and hatcheries limiting the retail sales of such produce to that which is produced by the farm operator.
5. Roadside stands.
6. Signs not to exceed forty (40) feet in area displaying the name of the farm or farm organization.
7. Additional requirements for variances in the floodplain:
  - A. Any variance granted on a property located in the floodplain shall meet the following additional criteria:
    - i. May not cause any increase in the regional flood elevation.
    - ii. May not increase the amount of obstruction to flood flows.
    - iii. The variance shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the ordinance.
    - iv. The floodproofing measures and EFD Existing Floodplain Development Overlay District standards required in this ordinance, NR 116 of the Wisconsin Administrative Code and FEMA regulations

must be met.

When a floodplain variance is granted, the Board of Adjustment shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property. A copy shall be maintained with the variance record.

- B. In a floodway, any modification or addition to a nonconforming structure or any structure with a nonconforming use may only be allowed with approval by the Waukesha County Board of Adjustment as a variance and pursuant to the above additional requirements for variances in the floodplain. If the Board of Adjustment grants said variance, the Board of Adjustment must require that an addition to the existing structure be floodproofed, pursuant to Section 8(c), by means other than the use of fill, to the flood protection elevation; and

If an enclosed structure used for parking and limited storage has a foundation partially below the flood protection elevation, the enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square foot of an enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade and the parts of the foundation below the flood protection elevation must be constructed of flood-resistant materials. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation.

## **SECTION 55**

Repeal and recreate Section 15(a)1.D to read as follows:

- D. The transfer of development rights may only take place between the RRD-5, the AD-10, C-1 and A-E districts, except that only a maximum of 20% of the transferring land zoned C-1 Conservancy or A-E Exclusive Agricultural Conservancy may be counted toward the overall density to be provided for the receiving land.

## **SECTION 56**

Repeal and recreate Section 16(a)1 to read as follows:

1. The purpose of this zoning district is to allow the development of land at densities not greater than one (1) unit for each five (5) acres on all non-prime agricultural areas, in order to encourage the preservation of Prime Agricultural tillable land, (U.S.D.A. Class I and II soils) to discourage residential development on environmentally sensitive areas, provide some marketability for such lands, and to encourage a more economical use of land which is suited to residential development by permitting more intensive use of such lands without changing the overall rural character of the town and the population density of the town as set forth in the adopted Land Use Plan. Further, only 20% of the lands in the C-1 Conservancy, or A-E Exclusive Agricultural Conservancy zoning districts may be used when calculating

the allowable living units.

#### **SECTION 57**

Repeal and recreate Section 16(b)2 to read as follows:

2. The transfer of development rights may only take place between RRD-5, the AD-10, A-E Exclusive Agricultural Conservancy and C-1 Conservancy Zoning Districts except that only a maximum of 20% of the transferring land zoned C-1 Conservancy or A-E Exclusive Agricultural Conservancy may be counted towards the overall density to be provided for the receiving land. Where more than 50% of the site is zoned in the C-1 or A-E category, only that amount of acreage up to the 50% amount may be used in the above calculations for density purposes.

#### **SECTION 58**

Repeal and recreate Section 16(b)7 to read as follows:

7. No building intended in whole or part for residential use shall be erected or relocated unless the lot on which it is located meets the required density factor or has allocated to it through the transfer program, sufficient additional preserved lands to meet the required density factor for the district in which it is located. Where "transferred lands" are to be established, no more than 20% of the total for computation may be in the C-1 Conservancy or A-E Exclusive Agricultural Conservancy zoning districts and in accordance with section 15(b) 2. of this Ordinance. Where the total area (or the pro-rated factor) involved includes more than one zoning district, the overall density factor shall apply. In any such case involving the establishment of "preserved lands" approval by the Plan Commission and the Waukesha County Zoning Agency shall be required, pursuant to the criteria and development goals set forth herein.

#### **SECTION 59**

Repeal and recreate Section 16(f)4.B.i to read as follows:

- i. They must be developed at no more than a five (5) acre density, taking into account only 20% of any C-1 Conservancy and A-E Exclusive Agricultural Conservancy where more than 50% of the site is zoned C-1 or A-E, only the amount of acreage up to the 50% amount may be used in the calculation of allowable density.

#### **SECTION 60**

Repeal and recreate Section 38(b)5 to read as follows:

5. The WDNR shall be notified of any decision of the board within ten (10) days from the date of the decision.

#### **SECTION 61**

Repeal and recreate Section 38(c)1 to read as follows:

1. Defined: The board of adjustment shall have the following powers as defined by statute:
  - A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of section 59.69 Wisconsin Statutes, or of this Ordinance.
  - B. To hear and decide disputes concerning the C-1 Conservancy, EFD Existing Floodplain Development Overlay and A-E Exclusive Agricultural Conservancy District boundaries in regards to floodplains as shown on the official zoning map.
    - i. If the district boundary is established by approximate or detailed floodplain studies approved by the WDNR or FEMA, the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined.
    - ii. In all cases, the person contesting the district boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Board.
    - iii. If a district boundary is incorrectly mapped, the Board should inform the zoning agency, Zoning Administrator, or the person contesting the district boundary location to petition for a map amendment according to Section 39.
  - C. To hear and decide special exceptions to the terms of this ordinance upon which such board is required to pass under this ordinance.
  - D. To authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest, unique property conditions exist not common to adjacent lots or premises, where owing to special conditions a literal enforcement of the provisions of this ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.
  - E. To grant special exceptions and variances for renewable energy resource systems if said system cannot meet normal locational requirements of this ordinance for accessory structures. If the board denies an application for a special exception or variance for a renewable energy resource system, the board shall provide a written statement of its reasons for denying the application. In this paragraph, "renewable energy resource systems" means a solar energy system, a waste conversion energy system, a wind energy system or any other energy system which relies on a renewable energy resource.

## **SECTION 62**

Repeal and recreate Section 38(c)2 to read as follows:

2. Additional requirements: In making its determination, the Board shall consider whether the proposed exception, variance or use would be hazardous, harmful, noxious, offensive or a

nuisance to the surrounding neighborhood by reason of physical, social or economic effects; and may impose such requirements and conditions with respect to location, construction, maintenance and operation-in addition to any which may be stipulated in this ordinance-as the board may deem necessary for the protection of adjacent properties and the public interest and welfare.

A variance shall not grant, extend, or increase any use prohibited in the zoning district; be granted for a hardship based solely on an economic gain or loss; be granted for a hardship which is self-created; damage the rights or property values of other persons in the area; allow actions without the appropriate amendments to this ordinance or map(s); allow any alteration of a historic structure in a floodplain, including its use, which would preclude its continued designation as a historic structure.

### **SECTION 63**

Repeal and recreate Section 38(c)4 to read as follows:

4. Enforcement of decision: In exercising the above-mentioned powers, such board may in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken; and may issue or direct the issue of a permit provided that no such action shall have the effect of permitting in any district a use prohibited in that district; of rezoning; of allowing a use or variance which would have the effect of intensifying a use in a manner contrary to what a similarly situated property would be allowed; of permitting, without the approval of the county zoning agency, any building within the base setback area as established by section 3(h) 1. of this Ordinance, or of granting exceptions to chapters COMM 83, NR115 or NR116 of the Wisconsin Administrative Code, FEMA regulations, the Waukesha County Sanitary Ordinance and any other federal, state, or local ordinance.

### **SECTION 64**

Repeal and recreate Section 38(d)3 to read as follows:

3. Hearing: Each appeal shall be heard within a reasonable time and not to exceed ninety (90) days-from the time the appeal was filed with the board. Notice of hearing shall be given by publishing in a newspaper of general circulation in the vicinity of the appeal at least once each week for two (2) consecutive weeks and not less than seven (7) days from the date of hearing. The notice shall be published pursuant to Wisconsin Statutes and shall specify the date, time, place and subject of the hearing. Written notice shall be given to the WDNR not less than ten (10) days prior to the hearing. Written notice shall also be given to the administrative officer appealed from and by first class mail to the petitioner, the clerk of the town wherein the affected lands are located, the owners of each parcel of land within one hundred (100) feet of the land in question, and any other specifically interested parties not less than ten (10) days prior to the hearing. At the hearing, any party may appear in person, or by agent or by attorney.

## **SECTION 65**

Repeal and recreate Section 38(d)4 to read as follows:

4. Decision: The decision on any appeal variance, special exception or interpretation shall be made within fifteen (15) days after completion of the hearing thereon unless such time is extended with the mutual consent of the board and the petitioner. At such time as a decision is made, the petitioner and the WDNR shall be notified in writing within ten (10) days of the date of the decision.

## **SECTION 66**

Repeal and recreate Section 38(d)5 to read as follows:

5. Insurance notice: When a floodplain variance is granted, the Board shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property. A copy of said notification shall be maintained with the variance record.

## **SECTION 67**

Repeal and recreate Section 39(b)2 to read as follows:

2. Filing of petition: One (1) original and five (5) copies of the amendment shall be submitted directly to the zoning administrator in order that notice of public hearings and other processing may be initiated without unnecessary delay (Waukesha County Board Resolution 9/54). One (1) copy of the petition and the notice of public hearing shall be forwarded to the SE District Office of the WDNR not less than ten (10) days prior to the hearing. When the amendment involves a change in zoning of a floodland area, said notice and petition shall also be sent to FEMA. In addition, all requirements set forth in section 39(f) shall be followed. When the petition involves a change in shoreland wetlands, the additional requirements set forth in section 39(e) shall be followed.

## **SECTION 68**

Repeal and recreate Section 39(b)9 to read as follows:

9. Effectuation: Any such amendatory ordinance when so adopted by the county board, shall become effective after passage by the county board and publication pursuant to Section 59.69, Wisconsin Statutes except as may be modified in section 39(e) herein. In the case of floodplain amendments and adjustments, the amendment shall not become effective until the WDNR approves the amendment after certification that the area has been removed from the floodplain and until a letter of map amendment is issued by the Federal Insurance Administration of FEMA. Upon receipt of the above cited approvals, the county clerk shall record in the clerk's office the date on which such ordinance is passed by the county board and approved by the other agencies required to approve and shall notify the town clerk of all towns affected by such ordinance of such date that the ordinance will take effect and also make such report to the county zoning administrator and the county board which report shall be printed in the proceedings of the county board.



## **SECTION 69**

Repeal and recreate Section 39(d)2 to read as follows:

2. Continued effect of ordinance: As provided in Chapter 59, Wisconsin Statutes, whenever any area which has been subject to a county zoning ordinance petitions to become part of a village or city, the regulations imposed by such county zoning ordinance shall continue in effect, without change, and shall be enforced by such village or city until the village or city enacts, administers and enforces an ordinance which meets the requirements of Section 59, Wisconsin Statutes, NR 116, Wisconsin Administrative Code and the National Flood Insurance Program (NFIP). These annexed lands are described on the village or city's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of administering this section and are on file in the office of the village or city zoning administrator. All plats or maps of annexation shall show the regional flood elevation and the location of the floodway. In the event an ordinance of annexation is contested in the courts, the county zoning shall prevail and the county shall have jurisdiction-over the zoning in the area affected until ultimate determination of the court action.

## **SECTION 70**

Repeal and recreate Section 39(e)1 to read as follows:

1. For all proposed text and map amendments to the shoreland/wetland provisions of this ordinance, the appropriate district office of the WDNR shall be provided with the following:
  - A. A copy of every petition for a text or map amendment to the shoreland/wetland provisions of this ordinance, within five (5) days of the filing of such petition with the zoning administrator. Such petition shall include a copy of the Final Wisconsin Wetland Inventory Map adopted as part of this ordinance describing any proposed rezoning of a shoreland/wetland.
  - B. Written notice of the public hearing to be held on a proposed amendment at least ten (10) days prior to such hearing.
  - C. A copy of the county zoning agency's findings and recommendations on each proposed amendment within ten (10) days after the submission of those findings and recommendations to the county board; and
  - D. Written notice of the county board's decision on the proposed amendment within ten (10) days after it is issued.

## **SECTION 71**

Repeal and recreate Section 39(e)3 to read as follows:

3. If the WDNR notifies the county zoning agency that a proposed text or map amendment to

the shoreland/wetlands governed by this ordinance may have a significant adverse impact upon any of the criteria listed in subsection (2) above, that amendment, if approved by the County Board, shall contain the following provision: "This amendment shall not take effect until more than thirty (30) days have elapsed after written notice of the county board's approval of this amendment is mailed to the WDNR. During that thirty-day period the WDNR may notify the county board that it will adopt a superseding shoreland ordinance for the county under Section 59.692(6) Wisconsin Statutes. If the WDNR does so notify the county board, the effect of this amendment shall be stayed until the Section 59.692(6) adoption procedure is completed or otherwise terminated." (Ord. No. 141-44, § LXVII, 7-22-86)

## **SECTION 72**

Repeal and recreate Section 39(e)4 to read as follows:

4. Where a wetland alteration has been approved as outlined above and results in an enlarged wetland area, the jurisdictional requirements of this Ordinance including the Conservancy District requirements remain in effect within the subject area. Where a wetland alteration results in a smaller wetland, the zoning category of contiguous lands shall apply.

## **SECTION 73**

Create Section 39(f) to read as follows:

### **(f.) Floodplain rezoning procedure**

1. The County may change or amend the zoning district boundaries in areas involving floodplains and this ordinance in the manner provided by law. Actions which require an amendment include, but are not limited to, the following:
  - A. Any change to the official zoning map, including the floodway line or boundary of any floodplain area.
  - B. Correction of discrepancies between the water surface profiles and official zoning maps.
  - C. Any fill, excavation, or land altering activities in the floodplain which are not a permitted use in Section 3(d)5.A., Preservation of Topography in Floodlands; Section 7, C-1 Conservancy District; Section 8, Existing Floodplain Development Overlay District; or Section 10, Exclusive Agricultural Conservancy District of this ordinance.
  - D. Any amendment to the text of this ordinance recommended by the County, required by NR 116.05, Wisconsin Administrative Code, or otherwise required by law.
  - E. Any changes to the maps to alter floodplains (including channel relocations, floodway line modifications, or removing an area from the floodway or floodfringe) that is based on a regional flood elevation or base flood elevation from a Flood Insurance Rate Map.

2. The following floodplain rezoning procedures must be followed:
  - A. Rezone petitions shall include all necessary data required by section 3(c)(2) of this ordinance.
  - B. Rezone petitions must not adversely impact the purpose and intent of this ordinance.
  - C. No amendments to rezone areas that involve floodplains shall be approved unless the Standards for Development of Section 3(d)5.A.ii. of this ordinance are met.
  - D. No amendments to rezone areas that involve floodplains based on a base flood elevation from a Flood Insurance Rate Map shall become effective by the County until approved by FEMA and the WDNR. No amendments to rezone areas that involve floodplains based on a regional flood elevation shall become effective until reviewed and approved by the WDNR. Required technical data submitted to the Zoning Administrator shall be sent to the WDNR regional office by the Zoning Administrator. WDNR will review the effect of the proposed amendment on the height of the regional flood elevation, assure no increase in the regional flood elevation will result and assure that the proposed amendments meet the purpose of the Wisconsin Administrative Code.
  - E. If the County amends the zoning district boundary to modify the zoning map, it shall submit these amendments and the plans for fill or alteration of the subject area to WDNR for approval pursuant to Section NR 116. Prior to WDNR approval, the applicant shall submit a final map to be certified by an engineer, that the fill or alteration as approved by the County has been accomplished to the specifications set forth by the amendment approved by the County.
  - F. For rezones in areas involving the floodplain with no water surface profiles, the county board shall consider data submitted by the WDNR, the zoning administrator's on-site inspections and other available information.
  - G. No area in the floodplain may be removed from the floodplain unless it can be shown that the area has been filled to the flood protection elevation and is contiguous to other lands lying outside the floodplain.
  - H. The effect of rezoning, filling and altering any floodplain shall be calculated by comparing the regional flood profile determined by the hydraulic floodway lines to the regional flood profile determined by assuming that the entire shallow depth flooding area (regional flood) is not available to convey floodflows. Calculations shall conform to the standards contained in Section NR116 of the Wisconsin Administrative Code.
3. Where a floodplain amendment has been approved as outlined in this Section, the jurisdiction and requirements of this Ordinance remain in effect within the subject

area, with the exception of the district requirements the lands are being removed from. Floodplain dimensional setbacks shall remain in effect from the newly established floodplain boundary.

4. Following the procedures in this section of the Ordinance does not remove the requirement for the mandatory purchase of flood insurance.
5. Prior to any changes of the official zoning map, the property owner must obtain a Letter of Map Change (LOMC) from FEMA.

#### **SECTION 74**

Repeal and recreate Section 40(b)1.D to read as follows:

- D. A notice of public hearing shall be sent to the county board supervisor representing the subject area, the main office and the appropriate district office of the WDNR, the federal insurance administration and, where appropriate, the U. S. Army Corps of Engineers.

#### **SECTION 75**

Repeal and recreate Section 41(b)1 to read as follows:

1. Designation: The Director of the Waukesha County Department of Parks and Land Use is designated as "zoning administrator" for the administration and enforcement of the provisions of this Ordinance and the zoning administrator has the authority to designate staff under his or her direction or the local building inspector to perform delegated tasks and duties.

#### **SECTION 76**

Repeal and recreate Section 41(b)2 to read as follows:

2. Duties: In the administration and enforcement of this ordinance the zoning administrator shall perform the following duties:
  - A. Advise applicants of the ordinance provisions, provide permit applications and appeals forms and assure that all necessary information is provided on the application.
  - B. Issue the necessary zoning and occupancy and use permits provided the provisions of the ordinance and of any applicable building code have been complied with. Issue floodplain certificates of compliance where appropriate.
  - C. Inspect structures and uses as necessary including the inspection of all damaged floodplain structures. Perform a substantial damage assessment to determine if substantial damage to the structures has occurred.
  - D. Keep an accurate record of all zoning and use permits issued, inspections made and work approved; including all required floodplain data when applicable, such as documentation of certified lowest floor and regional flood elevations for floodplain

development; records of water surface profiles; nonconforming uses and structures including changes, appeals, variances and amendments; and all substantial damage reports for floodplain structures.

- E. Keep accurate records and maps of the zoning ordinance and any amendments or changes thereto.
- F. Submit copies of the following items to the WDNR regional office regarding floodplain matters:
  - i. Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;
  - ii. Copies of any case-by-case floodplain analyses, and any other information required by the Department.
  - iii. Copies of substantial damage assessments performed and all related correspondence concerning the assessments.
  - iv. Copies of violation reports.
- G. Submit copies of text and map amendments relating to floodplain matters to the FEMA Regional office.
- H. Inspect and process any reported violation of this Ordinance in accordance with Section 41(c).

## **SECTION 77**

Create Section 41(b)6 to read as follows:

- 6. Public Information: The Zoning Administrator shall provide the following floodplain information, if available:
  - A. Where useful, marks on bridges or buildings or other markers may be set to show the depth of inundation during the regional flood at appropriate locations within the floodplain.
  - B. All available information in the form of maps, engineering data and regulations shall be readily available and should be widely distributed.
  - C. All legal descriptions of property in the floodplain should include information relative to the floodplain zoning classification when such property is transferred.

## **SECTION 78**

Repeal and recreate Section 42(a) to read as follows:

(a) **Abrogation and greater restrictions**

It is not intended by this ordinance to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations, or permits previously adopted or issued pursuant to law. However, wherever this ordinance imposes greater restrictions, the provisions of this ordinance shall govern. This ordinance, where it relates to floodlands, supersedes all the provisions of any municipal zoning ordinance enacted under Section 59.69, 59.692 or 59.694 for counties; Section 62.23 for cities; Section 61.35 for villages; or Section 87.30, Wisconsin Statutes. Where an ordinance is more restrictive than this ordinance in relation to floodlands and shorelands, only its greater restrictions are effective. The shoreland and floodplain protection provisions of this Ordinance required by the National Flood Insurance Program (NFIP) and ch. NR115 and ch. NR116 Wisconsin Administrative Code, supersede all less restrictive provisions of any other county zoning ordinance.

**SECTION 79**

Repeal and recreate Section 42(b) to read as follows:

(b) **Interpretation**

The provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the county and shall not be construed to be a limitation or repeal of any other powers granted by the Wisconsin Statutes and those now possessed by Waukesha County. If a provision of this Ordinance, required by ch. NR116, Wisconsin Administrative Code, is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this Ordinance or in effect on the date of the most recent text amendment to this Ordinance.

**SECTION 80**

Repeal and recreate Section 42(c) to read as follows:

(c) **Severability and non-liability**

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

The flood protection standards in this ordinance are based on engineering experience, scientific research and the best information available. Larger floods may occur or the flood height may be increased by man-made or natural causes. This ordinance does not imply or guarantee that non-floodplain areas or permitted floodplain uses will be free from flooding and flood damages. Nor does this ordinance create liability on the part of, or a cause of action against, the County or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.